


COUNTY OF MONTEREY AGREEMENT FOR SERVICES
(MORE THAN \$100,000)

AMENDED AND CONSOLIDATED PROFESSIONAL SERVICES AGREEMENT

This Amended and Consolidated Professional Services Agreement (hereinafter the "Amended and Consolidated Agreement") dated for reference purposes only on May 1, 2013, is entered into by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor").

RECITALS

A. WHEREAS, NMC and Contractor have previously entered into that certain Professional Services Agreement on or about December 15, 2009, as amended by Amendment No. 1 (as amended, "Prior Agreement No. 1"), for Rural Floor Budget Neutrality Appeal Services, as more particularly described on Exhibit A thereto, the term of which commenced on June 11, 2009 and is currently scheduled to expire on June 30, 2015.

B. WHEREAS, NMC and Contractor have previously entered into that certain Professional Services Agreement on or about March 22, 2010 ("Prior Agreement No. 2") for Medicare/Medicaid Crossover Bad Debt Recovery Services, as more particularly described on Exhibit A thereto, the term of which commenced on February 11, 2010 and is currently scheduled to expire on June 30, 2014.

C. WHEREAS, NMC and Contractor have previously entered into that certain Professional Services Agreement on or about January 30, 2007, as amended by Renewal Amendment Nos. 1 through 5 (as amended, "Prior Agreement No. 3") for Medicare Appeal Services, as more particularly described on Exhibit A thereto, the term of which commenced on January 1, 2007 and is currently scheduled to expire on June 30, 2013.

D. WHEREAS, NMC and Contractor have previously entered into that certain Professional Services Agreement on or about April 13, 2010, as amended by Renewal Amendment No. 1 and Renewal Amendment No. 2 (as amended, "Prior Agreement No. 4") for OSHPD Report Preparation Services, as more particularly described on Exhibit A thereto, the term of which commenced on July 1, 2010 and is currently scheduled to expire on June 30, 2013.

E. WHEREAS, NMC and Contractor have previously entered into that certain Professional Services Agreement on or about March 22, 2010 ("Prior Agreement No. 5") for Medicaid Eligible Day Services, as more particularly described on Exhibit A thereto, the term of which commenced on February 11, 2010 and is currently scheduled to expire on June 30, 2014.

F. WHEREAS, NMC and Contractor have previously entered into that certain Professional Services Agreement on or about April 13, 2010, as amended by Renewal Amendment Nos. 1 and 3 (as amended, "Prior Agreement No. 6"), for Medicare Cost Report Preparation Services, as more particularly described on Exhibit A thereto, the term of which commenced on July 1, 2010 and is scheduled to expire on June 30, 2013.

G. WHEREAS, NMC desires that Contractor continue to provide to NMC the various services provided pursuant to the terms of Prior Agreement No. 1, Prior Agreement No. 2, Prior Agreement No. 3, Prior Agreement No. 4, Prior Agreement No. 5 and Prior Agreement No. 6 (individually, an “Original Professional Services Agreement” and collectively, the “Original Professional Services Agreements”), and Contractor desires to continue to provide such services to NMC.

H. WHEREAS, starting in our about July 2012, Contractor started to provide additional consulting services to NMC which were billed under the Original Professional Services Agreements, and the parties desire to expressly provide for the additional consulting services through June 2014 (the “Additional Consulting Services”).

I. WHEREAS, in order to more effectively administer the Original Professional Services Agreements in a unified manner and provide for the Additional Consulting Services, the parties desire to amend and consolidate the Original Professional Services Agreements into a single agreement, extend the term of certain of the Original Professional Services Agreements in order to provide for a unified expiration date of June 30, 2015, and provide for the Additional Consulting Services, in accordance with the terms and conditions set forth in this Amended and Consolidated Agreement, which fully consolidates, amends, supersedes and replaces the Original Professional Services Agreements as of the Effective Date (as defined below). The Original Professional Services Agreements, as amended and consolidated by this Amended and Consolidated Agreement, is referred to herein as the “Agreement.”

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Amended and Consolidated Agreement, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. SERVICES TO BE PROVIDED. NMC hereby engages Contractor to perform, and Contractor hereby agrees to perform, each of the following services in conformity with the terms of the Agreement (individually, a “Service” and collectively, the “Services”) and the applicable scope of work and payment provision exhibit for the applicable Service (a “Service Exhibit”) attached hereto :

- 1.1. Rural Floor Budget Neutrality Appeal Services described in **Exhibit A-1** hereto;
- 1.2. Medicare/Medicaid Crossover Bad Debt Recovery Services described in **Exhibit A-2** hereto
- 1.3. Medicare Appeal Services described in **Exhibit A-3** hereto
- 1.4. OSHPD Report Preparation Services described in **Exhibit A-4** hereto;
- 1.5. Medicaid Eligible Day Services described in **Exhibit A-5** hereto;
- 1.6. Medicare Cost Report Preparation described in **Exhibit A-6** hereto; and
- 1.7. Consulting Services described in **Exhibit A-7** hereto.

2. PAYMENTS BY NMC. NMC shall pay the Contractor in accordance with the payment provisions set forth in the applicable Service Exhibit, subject to the limitations set forth therein and in this Agreement, and in accordance with the Payment Conditions set forth in Section 6 below. The total amount payable by NMC to Contractor under the Agreement shall not exceed the sum of **\$4,654,128** for the full Term of the Agreement including amounts paid to date pursuant to the Original Professional Services Agreements., and inclusive of contingency and hourly payments.

3. **TERM OF AGREEMENT.** This Amended and Restated Agreement becomes effective on the Effective Date (as defined below); provided, however, that this Amended and Consolidated Agreement is a continuation of the Original Professional Services Agreements in an amended and consolidated form, with the term of the Agreement (the “Term”) as to each applicable Service having commenced on the commencement date for such Service pursuant to the applicable Original Professional Services Agreement as set forth in the Recitals above (except that the term for the Consulting Services is deemed commenced as of July 1, 2012), and the Term expiring for all Services on June 30, 2015 (the “Expiration Date) (which extends the term for those Services otherwise scheduled to expire prior to such date pursuant to the applicable Original Professional Service Agreement). The Agreement shall continue in full force and effect until the Expiration Date, unless sooner terminated pursuant to the terms hereof; provided, however, that nothing herein shall be deemed to release either party from their obligations under the Original Professional Services Agreements, and further provided that the Services are meant to cover all applicable appeals and reopening activity to completion, until there are no outstanding issues such that any Contractor Surviving Obligations (as defined in the applicable Service Exhibit(s)) shall survive the Expiration Date until completion as more specifically provided in the Service Exhibits. This Amended and Consolidated Agreement is of no force or effect until signed by both Contractor and NMC and with NMC signing last, the date on which this Amended and Consolidated Agreement is fully executed being referred to herein as the “Effective Date.”

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following exhibits are incorporated herein by reference and constitute a part of this Amended and Consolidated Agreement:

- 4.1. **Exhibit A-1:** Rural Floor Budget Neutrality Appeal - Scope of Services and Payment Provisions;
- 4.2. **Exhibit A-2:** Medicare/Medicaid Crossover Bad Debt Recovery - Scope of Services and Payment Provisions;
- 4.3. **Exhibit A-3:** Medicare Appeal - Scope of Services and Payment Provisions;
- 4.4. **Exhibit A-4:** OSHPD Report Preparation - Scope of Services and Payment Provisions;
- 4.5. **Exhibit A-5:** Medicaid Eligible Day - Scope of Services and Payment Provisions;
- 4.6. **Exhibit A-6:** Medicare Cost Report Preparation - Scope of Services and Payment Provisions;
- 4.7. **Exhibit A-7:** Consulting Services - Scope of Services and Payment Provisions; and
- 4.8. **Exhibit B:** Form of Business Associate Agreement

5. **PERFORMANCE STANDARDS.**

- 5.1. Contractor warrants that Contractor and Contractor’s agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
- 5.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.3. Contractor shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. Contractor shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

- 6.1. Contractor shall submit to the Contract Administrator invoices on a form acceptable to NMC. If not otherwise specified, the Contractor may submit such invoices periodically or at the completion of the applicable Services, but in any event, not later than thirty (30) days after completion of the applicable Services. Contractor shall specifically identify on each invoice for payment the specific Service Exhibit for which payment is requested (by reference to the full title of the Service Exhibit for which work was performed). If payment is requested for more than one Service Exhibit, then separate invoices shall be provided. The invoices shall set forth the amounts claimed by Contractor for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within thirty (30) days of receiving the certified invoice.
- 6.2. Contractor may receive reimbursement for travel expenses, but only in strict accordance with the Monterey County travel policy.

7. TERMINATION.

- 7.1. During the Term, NMC may terminate the Agreement (or one or more Services under the Agreement) for any reason by giving written notice of termination to the Contractor at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under the Agreement for such terminated Service(s) shall be reduced in proportion to the applicable Service(s) provided prior to the date of termination.
- 7.2. NMC may cancel and terminate this Agreement (or one or more Services under the Agreement) for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of Contractor to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor for the terminated Service(s), and NMC may proceed with the work in any manner which NMC deems proper. The cost to NMC shall be deducted from any sum due the Contractor under this Agreement.

8. INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend and hold harmless, NMC and the County of Monterey (hereinafter collectively, "County"), its officers, agents and employees from any and all claims, liability, losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Contractor's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "Contractor's performance" includes Contractor's action or inaction and the action of Contractor's officers, employees, agents and subcontractors.

9. INSURANCE.

9.1. Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.2. Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

9.3. Insurance Coverage Requirements: Without limiting Contractor's duty to indemnify, Contractor shall maintain in effect throughout the Term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

9.3.1. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations.

Exemption/Modification (Justification attached; subject to approval).

9.3.2. Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

9.3.3. Workers' Compensation Insurance, If Contractor employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

9.3.4. Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on

a "claims-made" basis rather than an occurrence basis, the Contractor shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

9.4. Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Contractor completes its performance of services under this Agreement.

Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Amended and Consolidated Agreement by NMC, Contractor shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the Contractor has in effect the insurance required by this Amended and Consolidated Agreement. The Contractor shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Contractor shall at all times during the Term of this Agreement (including any period for which Contractor Surviving Obligations remain outstanding) maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the initial certificate of Contractor's insurance is not received by the Effective Date, or thereafter within five (5) business days prior to the expiration of the then-current policy term, as applicable, NMC may notify Contractor and Contractor shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Notwithstanding the foregoing, failure by Contractor to maintain the required insurance is a default

of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

- 10.1. Confidentiality. Contractor and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. Contractor shall not disclose any confidential records or other confidential information received from NMC or prepared or derived in connection with the performance of this Agreement, unless NMC specifically permits Contractor to disclose such records or information. Contractor shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. Contractor shall not use any confidential information gained by Contractor in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.
- 10.2. NMC Records. When this Agreement expires or terminates, Contractor shall return to NMC any NMC records which Contractor used or received from NMC to perform services under this Agreement.
- 10.3. Maintenance of Records. Contractor shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. Contractor shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then Contractor shall retain said records until such action is resolved.
- 10.4. Access to and Audit of Records. NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the Contractor and its subcontractors related to services provided under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess or \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5. Royalties and Inventions. NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. Contractor shall not publish any such material without the prior written approval of NMC.

11. **NON-DISCRIMINATION**. During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. Contractor and any subcontractors shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The

provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

- 12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, Contractor will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.
- 13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, Contractor is at all times acting and performing as an independent Contractor and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and Contractor shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, Contractor shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.
- 14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail, or by recognized overnight delivery service, to NMC and Contractor's contract administrators at the addresses listed below.

FOR NATIVIDAD MEDICAL CENTER:

Sid Cato
Management Analyst, Contracts /Purchasing
Natividad Medical Center 1441
Constitution Blvd. Salinas, CA. 93906
Phone: 831.783.2620
Email: catosl@natividad.com

FOR CONTRACTOR:

Tom Knight/Jim Young
President/
Toyon & Associates Inc.
1800 Sutter Street, Suite 600
Concord, CA. 94520
FAX: 925.687.9013
Email: Tom.Knight@toyonassociates.com
Jim.Young@toyonassociates.com

- 15. **BUSINESS ASSOCIATE AGREEMENT.** Concurrently herewith, NMC and Contractor shall execute the Business Associate Agreement in the form attached hereto as Exhibit B, which replaces and supersedes the Business Associate Agreement dated July 1, 2009 between NMC and Contractor. Contractor agrees to execute such amendments and/or new business associate agreements as NMC reasonably requests. To the extent there is any conflict between the terms of the Business Associate Agreement and the terms of this Agreement, the terms of the Business Associate Agreement shall control.

16. MISCELLANEOUS PROVISIONS.

- 16.1. Conflict of Interest. Contractor represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any

manner or to any degree with the full and complete performance of the Services required to be rendered under this Agreement.

- 16.2. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 16.3. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 16.4. Contractor. The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 16.5. Disputes. Contractor shall continue to perform under this Agreement during any dispute.
- 16.6. Assignment and Subcontracting. The Contractor shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, Contractor shall continue to be liable for the performance of all requirements of this Agreement.
- 16.7. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and Contractor under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 16.8. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 16.9. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 16.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 16.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 16.12. Non-exclusive Agreement. This Agreement is non-exclusive and each of NMC and Contractor expressly reserves the right to contract with other entities for the same or similar services.
- 16.13. Construction of Agreement. NMC and Contractor agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 16.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that facsimile or electronic .PDF copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce

original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

- 16.15. Integration. This Amended and Consolidated Agreement, including the exhibits, represents the entire Agreement between NMC and the Contractor with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between NMC and Contractor as of the Effective Date of this Amended and Consolidated Agreement.
- 16.16. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any Service Exhibit, the provisions of the Service Exhibit shall prevail and control. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any other exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

17. ADDITIONAL PROVISIONS.

- 17.1. Contractor's Proprietary Information. NMC agrees that at all times both during the term of the Agreement and after its termination, it will keep in confidence and trust any information of a confidential or secret nature applicable to the business of Contractor or learned by it during the term of this Agreement, which is specifically identified in writing by Contractor to NMC as being proprietary ("Proprietary Information"). Under no circumstances will NMC use or participate in the use of such Proprietary Information, for its own benefit, for the benefit of any competitor of Contractor, or to the detriment of Contractor.
- 17.2. Confidentiality. Except the extent required by applicable federal or state law, NMC agrees that it will not release to any third party other than the Medicare Intermediary, the Provider Reimbursement Review Board, and CMS, material which have been prepared by Contractor, in connection with the work performed under this Agreement; provided, however, nothing herein shall prohibit disclosure to employees, agents and other representatives, including but not limited to legal, accounting, financial and other advisors (collectively, "Representatives") of NMC and/or the County. Both parties agree that this Agreement shall be treated as confidential and copies thereof shall not be disclosed unless required under applicable federal or state law, except that disclosure to Representatives is not prohibited. The foregoing shall not limit Contractor's confidentiality obligations pursuant to Section 10 above.
- 17.3. Access to Books and Records. Until the expiration of four years after furnishing the Services provided under this Agreement, Contractor will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this Agreement and all books, documents, and records necessary to certify the nature and extent of the costs of those services.
- 17.4. Arbitration. If any dispute arises concerning the interpretation, validity, or performance of this Agreement or any of its terms and provisions, then the parties shall submit such dispute for binding determination before a single arbitrator (unless the amount in dispute is greater than \$750,000 in which case it shall be arbitrated before a panel of three arbitrators) selected from JAMS/Endispute's office nearest to the NMC facility, or any similar organization mutually acceptable to the parties. IF 3 ARBITRATORS: Each party shall choose one arbitrator from the list provided by the arbitrating organization, and the two arbitrators so selected shall agree upon a third

arbitrator chosen from the same list. The arbitration shall take place in Monterey County, California and shall be conducted in accordance with the then prevailing rules of the arbitrating organization, except as set forth in this paragraph. The parties shall have all rights for depositions and discovery as set forth in Section 1283.05 and 1283.1 of the California Code of Civil Procedure. The arbitrator(s) shall apply California substantive law and the California Evidence Code to the proceeding. The arbitrator(s) shall have the power to grant all legal and equitable remedies including provisional remedies and award compensatory damages provided by California law, but the arbitrator(s) may not order relief in excess of what a court could order. The arbitrator(s) shall not have authority to award punitive damages. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning or to make findings of fact except upon sufficiency of the evidence and any award may be vacated or corrected for any such error. The arbitrator(s) shall prepare and provide the parties with a written award including factual findings and the legal reasoning upon which the award is based. The arbitration fees charged by the arbitrator(s) shall initially be shared equally by the parties; provided, however, the arbitrator(s) shall award costs and attorneys' fees in accordance with the terms of this Agreement and may reallocate arbitration fees in connection with such award. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The parties understand that by agreement to binding arbitration they are giving up the rights they may otherwise have to a trial by a court or a jury and all rights of appeal, and to an award of punitive damages. Pending resolution of any arbitration proceeding, either party may apply to any court of competent jurisdiction for any provisional remedy, including but not limited to a temporary restraining order or a preliminary injunction but excluding any dispute relating to discovery matters, and for enforcement of any such order. The application for or enforcement of any provisional remedy by a party shall not operate as a waiver of the within agreement to submit a dispute to binding arbitration

17.5. Authorization. NMC shall indicate its acceptance of this Agreement through execution by an authorized representative from NMC in the indicated space on the following page. Contractor's obligation to begin performance pursuant to this Agreement commences when it receives (by mail, fax or e-mail) an executed copy of this Agreement from NMC; provided, however, that until such time as this Agreement is fully-executed and delivered, Contractor shall continue to provide Services pursuant to the Original Professional Services Agreements. However, when performance must begin immediately for the Additional Consulting Services (i.e. services not covered by the Original Professional Services Agreements) because of third party imposed deadlines, Contractor shall begin performance upon the request of NMC, confirmed by Contractor's notice to NMC that it has commenced work with an Agreement to follow.

17.6. Disclosure. Neither Contractor nor any agent or employee of Contractor that will be providing services under this Agreement has been excluded, debarred or otherwise sanctioned from participation in any federal or state healthcare program, including Medicare, Medicaid or Champus programs or has been convicted or found to have violated any federal or state fraud and abuse laws or illegal remuneration law.

NATIVIDAD MEDICAL CENTER

By: _____
Sid Cato, NMC Contracts

Date: _____

By: [Signature]
Department Head (if applicable)

Date: 5/8/13

By: [Signature]
Anne Brauer,
Deputy County Counsel

Date: May 21, 2013

By: [Signature]
Gary Giboney
Auditor/Controller/Office

Date: 5-2-13

CONTRACTOR

TOYON ASSOCIATES, INC.
Contractor's Business Name***

[Signature]
Signature of Chair, President, or Vice-President

Thomas P Knight, President
Name and Title

Date: 5/6/13

By: [Signature]
Signature of Secretary, Asst. Secretary,
CFO, Treasurer or Asst. Treasurer

JANANNA M KNIGHT, Secretary
Name and Title

Date: 5/6/13

*****INSTRUCTIONS:**

If Contractor is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers.

If Contractor is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership.

If Contractor is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement.