

**MEMORANDUM OF UNDERSTANDING BETWEEN THE MONTEREY
COUNTY ADMINISTRATIVE OFFICER AND THE CHIEF EXECUTIVE
OFFICER OF NATIVIDAD MEDICAL CENTER REGARDING THE
DELEGATION OF PURCHASING ACTIVITIES & RESPONSIBILITIES**

1. **Purpose.** This MOU provides for comprehensive delegation of purchasing function(s) from the CAO to NMC's CEO as Deputy Purchasing Agent for Natividad Medical Center ("NMC" or "Hospital"). The intent of the delegation is to provide for improved responsiveness, efficiency and effectiveness in responding to the Hospital's unique purchasing needs in compliance with applicable federal, state and local laws. Delegated functions will be carried out by NMC's Purchasing Agent or his / her designee, who will provide supervision, assistance and advice to NMC's staff and employees.

2. **Authority & Delegation.** Government Code § 25500 authorizes the Board of Supervisors to employ a Purchasing Agent and such assistants as are necessary for proper performance of his duties, which are set forth in Government Code §§ 25501, *et seq.* The Monterey County Board of Supervisors has appointed the County Administrative Officer as the County's Purchasing Agent. Monterey County Code § 2.32.010 provides that "[t]he duties of the Purchasing Agent shall be performed by the County Administrative Officer. The term "Purchasing Agent" as used in this Chapter shall mean the County Administrative Officer or the designee of the County Administrative Officer."

Under authority and at the direction of the Board of Supervisors, the CAO, who has been designated as the County's Purchasing Agent, hereby agrees to, and does, designate Natividad Medical Center's ("NMC") Chief Executive Officer ("CEO") as a Deputy Purchasing Agent, to exercise the powers and duties of Purchasing Agent for NMC. As set forth in § 2.32.020, the NMC Deputy Purchasing Agent and his or her designee shall have the duties and powers prescribed by laws of the State of California relating to County Purchasing Agents, as limited or specifically authorized by Title 2, Monterey County Code Chapter 2.32 and this Memorandum of Understanding.

3. **Title to Property.** Hospital property, both real and personal, is owned by the County of Monterey. The title, direction and control of property are vested with the Board of Supervisors. Decisions regarding acquisition and/or deposition of such property shall include consideration of recommendations from the NMC Board of Trustees. Purchases, sales, and leases of real property, and investment, transfer or other expenditures of trust funds shall be made only upon formal approval by the Board of Supervisors or their designee(s).

4. **Reserved Authority.** The Board of Supervisors reserves to itself the following powers, with consideration of recommendations from the Board of Trustees:

- a. Borrowing approval(s);
- b. Issuance of debt;
- c. Approval of annual operating and capital budgets;
- d. Approval of strategic and/or business plan(s);
- e. Approval of contracts for services greater than \$100,000;

- f. Approval of goods and capital goods greater than the approved annual budget; and
- g. Purchase, sale, lease, and control of real property.
- h. Approval of contracts for the erection, improvement, repair and/or maintenance of buildings and other structures or public improvements of any kind equal to or greater than \$4,000. If less than \$4,000 such contracts must follow the procedures and requirements set forth in the NMC Purchasing Manual.

5. Scope of Delegations. Specific authorizations delegated to the Natividad Deputy Purchasing Agent (or designee of the NMC CEO) include the following:

- a. Serve as NMC's Purchasing Manager. Any individuals serving as Hospital Purchasing Manager or performing such duties shall be duly deputized by the County of Monterey.
- b. Ensure that a full set of applicable and appropriate written procedures are developed and implemented for performing the purchasing function(s) for the Hospital, and ensure full compliance with these procedures. The written procedures and any subsequent changes thereto shall be consistent with and adhere to County policies and procedures. The Hospital's purchasing procedures will be subject to review by the County Administrative Officer and the Auditor-Controller prior to implementation.
- c. Negotiate and manage all terms and conditions of NMC contracts within the Hospital's approved annual operating and capital budgets in accordance with the Purchasing Manual.
- d. Approve use of group purchasing organizations over local vendors within appropriations designated by approved operating and capital budgets;
- e. Determine when an RFP/ RFI/ RFQ is required, and prepare and approve all such RFP's/ RFI's/ RFQ's;
- f. Authorize professional service contracts, services and materials contracts and/or procurement contracts without competitive bid as permitted by applicable federal, state, local and/or County laws and regulations;
- g. Prepare and obtain Board of Supervisors approval of a full standardized set of professional risk management provisions meeting the unique purchasing requirements and associated risk management provisions associated with Hospital industry standard procurement business practices;
- h. Coordinate County Counsel review and approval of all contracts.
- i. Review insurance evidence and endorsement capabilities of each vendor, with the NMC CEO approving all insurance requirements, including any exceptions to the preferred Monterey County insurance requirements, subject to the Board of Supervisors' approval of risk management provisions under subsection g, above.

- j. Assure that all Natividad purchases and contacts are properly authorized and documented and meet the internal fiscal terms and controls established and required by the Auditor-Controller, and
- k. Seek annual approval from the County's Auditor-Controller for NMC's master spending categories.

6. Implementation Responsibilities and Limitation of NMC. In accepting these delegations of purchasing authority, the NMC CEO and his/her designee and the Hospital Purchasing Director each agree to:

- a. Develop Hospital-specific written purchasing policies and procedures that meet Joint Commission on Accreditation of Hospitals ("JCAHO") standards, and federal, state and local laws and regulations;
- b. Update the Hospital's purchasing organizational structure, including recruitment, hiring and training of personnel designated to implement and administer the hereby-delegated Hospital procurement functions. A staff member from the County Purchasing Division may be included in the selection process for deputized positions.
- c. Update and maintain NMC's Purchasing Manual to reflect and implement the hereby-delegated purchasing procedures and responsibilities.
- d. Develop master spending categories linked to the Hospital's approved annual operating and capital budgets;
- e. Develop an electronic purchase / ordering process based on global spending categories, as limited by the Hospital's approved fiscal year budget. NMC will internally link all purchase orders to each of the three (3) spending categories for any purchases involving services and goods;
- f. Develop and maintain a contract management system that includes management reports, contract tracking and contract templates, and related purchasing contract data;
- g. Be fully responsible for meeting all federal, state, local laws and regulations, as well as all applicable JCAHO requirements;
- h. Develop and implement training programs for Hospital managers and employees who are involved in the procurement function to effectuate consistent compliance with the Hospital's purchasing policies.
- i. The NMC CEO and the CAO or his/her designee may prospectively mutually agree from time to time that NMC purchase other Monterey County special resources to efficiently conduct the purchasing delegations at NMC.

7. In accepting these delegations of purchasing authority, the NMC CEO and his or her designees each acknowledge and understand that upon adoption of a final budget by the Board of Supervisors, except as may be otherwise provided by law, the Board of

Supervisors and each County official is limited to approving expenditures or incurring liabilities in a cumulative amount not to exceed the "appropriation" established by that approved fiscal year budget, or as may thereafter be amended by the Board of Supervisors. Government Code §§ 29120–29124 set forth the individual's liabilities for expenditures approved by County officials that exceed budgeted funds.

8. Implementation Responsibilities of Monterey County. Monterey County's Purchasing Division agrees to review NMC organizational development, policy development, and training necessary to appropriately deploy the delegated procurement authority to the Hospital. The Auditor-Controller will annually approve NMC's master spending categories during the annual approval process of approving the Hospital's operating and capital budgets.

9. Compliance.

- a. NMC's CEO hereby assumes responsibility to ensure that the Hospital purchasing and procurement functions performed pursuant to the delegations contained in this MOU are conducted in accordance with sound purchasing practices, all applicable federal, state and local laws, regulations, rules, procedures and guidelines, as well as the policies and procedures specified in NMC's Purchasing Policy and Procedures Manual. Monterey County's Purchasing Policies and administrative procedures will be reviewed and changed to ensure that there is no conflict with the Hospital purchasing delegations.
- b. The NMC CEO shall ensure that changes or amendments made from time to time to the County's purchasing policies, rules or guidelines are incorporated into NMC's purchasing policies and procedures.
- c. Notwithstanding the delegations of purchasing and procurement functions to the Hospital contained herein, the CAO retains the authority to conduct compliance reviews and the County Auditor-Controller retains the authority to conduct audits pursuant to Government Code § 26883. NMC shall cooperate fully with the Auditor-Controller and the CAO in their respective audit and compliance review activities. The Board of Supervisors shall be informed of the findings of financial audits and performance reviews.
- d. The County Purchasing Agent and/or the Auditor-Controller shall issue an annual report that evaluates NMC's compliance with policies and procedures, and the effectiveness of the Hospital's exercise of the purchasing activities delegated in this MOU.

10. Breach. The delegations conferred by this MOU add new functions to those currently performed by NMC. As a condition of delegations of purchasing and procurement authority, the NMC CEO agrees and assumes full responsibility to perform the purchasing and procurement function in compliance with County Purchasing policies and procedures, JCAHO standards, and federal, state and local legal purchasing requirements.

In the event that audits indicate that the Hospital purchasing activities are not in compliance with applicable laws and standards, the CAO may notify the NMC CEO of the violation(s) and give the CEO a reasonable time to correct these deficiencies. If, after a reasonable period of time elapses, inadequate or ineffective corrective action has been taken, the CAO may consult with the Board of Supervisors regarding appropriate modification or withdrawal of the affected delegation(s) conferred by this MOU.

In the event of a breach, this section does not limit the authority of the CAO in consultation with the Board of Supervisors to withdraw the affected purchasing delegation(s) in whole or in part under any other applicable provision of this MOU. It is instead a cumulative remedy in addition to any and all other remedies available.

11. Effective Date/Termination. This MOU shall become effective upon approval by the Board of Supervisors and execution by all parties, and will remain in effect until modified by written agreement of all parties, or upon the decision of the CAO in consultation with the Board of Supervisors to modify or terminate the Agreement in whole or in part.

IN WITNESS WHEREOF, the undersigned have executed this MOU on the date(s) hereinafter indicated:

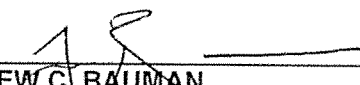
COUNTY OF MONTEREY

Date: October ____, 2007



DAVE POTTER, Chair
Board of Supervisors

Date: October 26, 2007



LEW C. BAUMAN
County Administrative Officer


Date: October ____, 2007



MICHAEL J. MILLER
Auditor-Controller

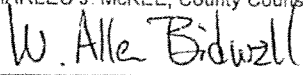
NATIVIDAD MEDICAL CENTER

Date: October 29, 2007



WILLIAM T. FOLEY
NMC Chief Executive Officer

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



W. Allen Bidwell, Deputy County Counsel

Date: October 25, 2007