



Hazel Hawkins

MEMORIAL HOSPITAL

**SPECIAL MEETING OF THE BOARD OF DIRECTORS
SAN BENITO HEALTH CARE DISTRICT
911 SUNSET DRIVE, HOLLISTER, CALIFORNIA**

**FRIDAY, NOVEMBER 4, 2022, 4:00 PM
WOMEN'S CENTER - HORIZON ROOM**

San Benito Health Care District is a public agency that serves as a responsive, comprehensive health care resource for its patients, physicians, and the health care consumers of the community.

AGENDA

1. **Call to Order – Roll Call** Hernandez

2. **Recommendation for Board Action** (pgs. 4 – 14) Casillas
 - A. Consider Recommendation for Board Approval of Agreement for Professional Services for Robert MacArthur, M.D., effective October 1, 2022 at the rate of \$2,500 per shift.
 - Report
 - Board Questions
 - Motion / Second
 - Public Comment
 - Action / Vote by Board

3. **Public Comment** Hernandez

This opportunity is provided for members to comment on the closed session items, not to exceed three (3) minutes.

4. **Closed Session** Hernandez

(See Attached Closed Session Sheet Information)

5. **Reconvene Open Session / Closed Session Report** Hernandez

6. **Public Hearing** (pgs. 15 – 18) Hernandez
 - A. **Consider Board Resolution No. 2022-21 Declaring a Fiscal Emergency and Vesting Authority to File a Chapter 9 Petition to an Authorized Representative**
 - Report
 - Board Questions
 - Public Comment
 - Close Hearing
 - Motion / Second; Discussion
 - Action / Vote by Board

7. **Adjournment** Hernandez

**SAN BENITO HEALTH CARE DISTRICT BOARD OF DIRECTORS
NOVEMBER 4, 2022**

AGENDA FOR CLOSED SESSION

Pursuant to California Government Code Section 54954.2 and 54954.5, the board agenda may describe closed session agenda items as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items are described in substantial compliance with Section 54954.5 of the Government Code.

CLOSED SESSION AGENDA ITEMS

[] LICENSE/PERMIT DETERMINATION
(Government Code §54956.7)

Applicant(s): (Specify number of applicants) _____

[] CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Government Code §54956.8)

Property: (Specify street address, or if no street address, the parcel number, or other unique reference, of the real property under negotiation): _____

Agency negotiator: (Specify names of negotiators attending the closed session):__

Negotiating parties: (Specify name of party (not agent): _____

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both):

[] CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION
(Government Code §54956.9(d)(1))

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers):
_____, or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations): _____

[X] CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION
(Government Code §54956.9)

Significant exposure to litigation pursuant to Section 54956.9(d)(2) or (3) (Number of potential cases): ____

Additional information required pursuant to Section 54956.9(e): _____

Initiation of litigation pursuant to Section 54956.9(d)(4) (Number of potential cases): 1

[] LIABILITY CLAIMS
(Government Code §54956.95)

Claimant: (Specify name unless unspecified pursuant to Section 54961):

Agency claimed against: (Specify name): _____

[] **THREAT TO PUBLIC SERVICES OR FACILITIES**
(Government Code §54957)

Consultation with: (Specify the name of law enforcement agency and title of officer): _____

[] **PUBLIC EMPLOYEE APPOINTMENT**
(Government Code §54957)

Title: (Specify description of the position to be filled):

[] **PUBLIC EMPLOYMENT**
(Government Code §54957)

Title: (Specify description of the position to be filled):

[] **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
(Government Code §54957)

Title: (Specify position title of the employee being reviewed):

[] **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**
(Government Code §54957)

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

[] **CONFERENCE WITH LABOR NEGOTIATOR**
(Government Code §54957.6)

Agency designated representative:

Employee organization:

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations):

[] **CASE REVIEW/PLANNING**
(Government Code §54957.8)

(No additional information is required to consider case review or planning.)

[] **REPORT INVOLVING TRADE SECRET**
(Government Code §37606 & Health and Safety Code § 32106)

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility):

1. Trade Secrets, Strategic Planning, Proposed New Programs, and Services.

Estimated date of public disclosure: (Specify month and year): unknown

[] **HEARINGS/REPORTS**

(Government Code §37624.3 & Health and Safety Code §§1461, 32155)

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee):

[] **CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW** (Government Code §54956.86)

(No additional information is required to discuss a charge or complaint pursuant to Section 54956.86.)

ADJOURN TO OPEN SESSION



Board of Directors Contract Review Worksheet

*Agreement for Professional Services with **Robert MacArthur, M.D.***

Executive Summary: With a decrease in available orthopedic providers for clinic and emergency call coverage, Dr. MacArthur will assume part-time/locum tenens clinic and emergency call coverage beginning October 2022.

Recommended Board Motion: It is recommended the hospital Board approve an Agreement for Professional Services with Dr. Robert MacArthur at the rate of \$2,500 per shift.

Services Provided: Part-time/locum tenens orthopedic clinic & emergency call coverage up to 14 shifts per month.

Agreement Terms:

| Contract Term | Effective Date | FMV %ile | Base Monthly Cost | Estimated Annual Cost | Term clause |
|----------------------|-----------------------|-----------------|--|---|--------------------|
| 1 year | 10/1/2022 | 60th | \$15,000 + travel (flight/rental car) | \$180,000 + travel (flight/rental car) | 30 days |

Contract Rate: \$2,500 per shift + reimbursement of travel (*flight/rental car*) expenses.

**AGREEMENT FOR
PROFESSIONAL SERVICES**

This Agreement ("Agreement") is made and entered into effective **October 1, 2022** ("Effective Date"), by and between **San Benito Health Care District**, a local health care district organized and operating pursuant to Division 23 of the California Health and Safety Code ("SBHCD"), and **Robert J. MacArthur, M.D.** ("Physician"). SBHCD and Physician are collectively referred to as the "Parties" and individually as a "Party."

RECITALS

- A. SBHCD is a California local health care district that owns and operates health care facilities in San Benito County, California, providing inpatient, outpatient, and other health care services to residents of its service area.
- B. SBHCD owns and operates Hazel Hawkins Memorial Hospital, a general acute care facility ("Hospital"), and multispecialty community medical clinics ("Clinics").
- C. Physician is duly licensed to practice medicine in the State of California and is qualified to provide professional services in his specialty of orthopedics in an inpatient hospital and outpatient clinic setting.
- D. SBHCD desires that Physician provide inpatient services including surgery ("Hospital Services"), on-call coverage in the Hospital's emergency department ("Emergency Department Call Coverage Services") and clinic-based professional services ("Clinic Services") (collectively "Specialty Services"), and Physician is prepared to do so in accordance with the terms and conditions set forth in this Agreement.

The Parties agree as follows:

I. SERVICES

- 1.1 **Professional Services.** Physician shall be available to provide Hospital, Emergency Department Call Coverage, and Clinic Services, beginning on the Effective Date of this Agreement. Physician shall provide such services on a part-time basis as mutually agreed upon, based upon Physician's availability and SBHCD's needs.

Effective December 1, 2022, Physician shall be available to provide Hospital, Emergency Department Call Coverage, and Clinic Services on a part-time basis up to fourteen (14) days per month on a schedule mutually agreed upon.

- 1.2 **Hospital Services.** Physician shall provide the following Hospital Services:
 - 1.2.1 Participation in multi-disciplinary rounds as requested and in coordination with other physicians providing services in Physician's specialty. During the multi-disciplinary rounds, Physician will assist in the evaluation and management of patients, and when necessary, may intervene in the care of patients. Physician shall report information in a timely manner to the attending physician.

- 1.2.2 Consultations, upon request, to members of the Hospital's Medical Staff managing their own patients or concerning the application of the admission or discharge criteria or the admission or discharge of Physician's patients.
- 1.2.3 Assistance with the management and treatment of patients for whom Physician is responsible as part of a multi-disciplinary team. When the patient has an attending/referring physician, Physician shall include such physician in decision-making and keep such physician informed.
- 1.3 **Clinic Services.** Physician shall provide the following Clinic Services:
 - 1.3.1 Render evaluation, management, surgical and non-surgical services to orthopedic patients.
 - 1.3.2 Coordination of medical activities of the Clinic to be accomplished through continuous communication with appropriate SBHCD administrative personnel regarding matters relating to the orthopedic medical administration of the Clinics.
 - 1.3.3 Provide chart review and audits of appropriate mid-level practitioner staff, as needed.
- 1.4 **Hospital Emergency Department Call Coverage Services.** Physician shall provide Emergency Department Call Coverage Services on schedules mutually agreed upon by SBHCD and Physician. Physician shall provide Emergency Department Call Coverage Services under the compensation arrangements set forth in Section 5.1 and Exhibit B of this Agreement and shall not be eligible to receive separate on-call stipend payments provided to Medical Staff members or otherwise. During the hours when Physician is on call, Physician must be reachable within ten (10) minutes by telephone or pager, and Physician must respond to the Hospital within thirty (30) minutes.
- 1.5 **Additional Services**
 - 1.5.1 **Communication with Referring Physicians.** When furnishing care to patients upon the referral by another physician, Physician shall provide the referring physician with appropriate follow-up oral reports and updates on the patient's course of treatment and condition in a manner and frequency consistent with the patient's condition. When Physician discharges any patient referred by another physician, Physician shall provide the referring physician with Physician's recommendations concerning appropriate patient follow-up care if Physician will no longer be following the patient.
 - 1.5.2 **Communication.** Physician shall maintain an effective communication process to interface with patients, patients' attending and specialist physicians, staff at the Hospital, Clinic, and the public, with the goal of enhancing patient satisfaction and the quality of care.
- 1.6 **Non-Exclusivity.** This Agreement is not exclusive to either SBHCD or Physician.

II. SBHCD RESPONSIBILITIES

- 2.1 **General.** SBHCD shall provide the space, furniture, equipment, supplies, personnel, and services that SBHCD deems reasonably necessary for the provision of services under this Agreement. Physician shall use such space, items, and services only for the performance of the services required by this Agreement
- 2.2 **Non-Physician Personnel.** SBHCD shall be solely responsible for all salaries, other compensation, employer's payroll taxes, workers' compensation coverage, and fringe benefits, for SBHCD

employed non-physician personnel associated with the provision of services and administrative services under this Agreement. SBHCD retains full authority to employ, appoint, discipline, transfer and terminate such non-physician personnel.

- 2.3 **Management.** SBHCD shall, at all times, retain and exercise ultimate responsibility for and management and operation of the Hospital and the Clinics.
- 2.4 **SBHCD Authority.** SBHCD expressly retains administrative responsibility for the services rendered by Physician, and the authority to make decisions regarding the quality or appropriateness of services provided by Physician, in accordance with its policies and procedures, its quality assurance and peer review procedures and Medical Staff Bylaws, as and to the extent required by laws and regulations. However, SBHCD shall not interfere with or control Physician's exercise of medical judgment.

III. LICENSURE AND STANDARDS

- 3.1 **Requirements.** During the term of this Agreement Physician shall:
 - 3.1.1 Be duly licensed to practice medicine in the State of California;
 - 3.1.2 Be an active member in good standing of the Hospital's Medical Staff, with appropriate clinical privileges in Physician's specialty;
 - 3.1.3 Provide services that meet or exceed the community standard of care;
 - 3.1.4 Be a participating physician under the Medicare and Medi-Cal programs and have executed and maintain on file with the appropriate Medicare and Medi-Cal carriers valid agreements to accept assignment and be qualified for Medicare risk- and cost-based managed care plans; and
 - 3.1.5 Possess current unrestricted federal and state permits to prescribe medications, including controlled substances.

IV. BILLING AND ASSIGNMENT OF REVENUE

- 4.1 **Billing and Collection.** SBHCD shall arrange for a third-party to perform billing and collection services under this Agreement. Physician shall cooperate with SBHCD's designated billing and collections agent and shall use best efforts to assist with the billing and collection for services in a diligent, timely, competent, effective, lawful, and commercially reasonable manner, maximizing the revenue to which Physician is legally and ethically entitled. Physician understands and agrees that Physician's professional services likely will be billed under the rules relating to focums.
- 4.2 **Assignment of Professional Service Revenues.** Physician hereby assigns to SBHCD the right to all revenue from all patients, third-party payors, and governmental programs for all services rendered by Physician at the Hospital and the Clinic under this Agreement. The Parties intend that SBHCD may bill and collect directly from the Medicare carrier for Physician services to Medicare beneficiaries in compliance with Medicare Publication 100-04, Chapter 1, Sec. 302.7.

V. COMPENSATION

- 5.1 **Compensation to Physician.** SBHCD shall compensate Physician for Physician's services in accordance with Exhibit B attached to this Agreement. The compensation is in consideration for, and

it shall cover all of Physician's professional services as set forth in this Agreement. SBHCD shall pay Physician on a monthly basis in accordance with the normal SBHCD contract payment process, for Services provided by Physician during the immediately preceding monthly period. Physician shall not bill, or cause to be billed, for facility fees, administrative, supervisory, medical director, or similar services.

VI. TERM AND TERMINATION

- 6.1 **Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of one (1) year, unless earlier terminated pursuant to the terms of this Agreement.
- 6.2 **Termination without Cause.** Either party may terminate this Agreement at any time without stating a cause or reason and without penalty by giving the other party at least thirty (30) days' prior written notice.
- 6.3 **Immediate Termination.** If Hospital reasonably finds the performance of Physician providing coverage under this Agreement to be unacceptable for reasons of professional competence or personal conduct, Hospital in its sole discretion may immediately remove Physician.
- 6.4 **Termination with Cause.** Either Party may immediately terminate this Agreement, for cause, including material breach of this Agreement, upon written notice to the other Party. Such notice shall specify the cause upon which it is based. Grounds for immediate termination by SBHCD also include:
 - 6.4.1 Physician's loss or suspension of his medical license. Physician's conviction (whether final or on appeal) of a felony or any crime involving moral turpitude, or Physician's failure to maintain, for any reason, his status as a member of the active Medical Staff with appropriate privileges; or
 - 6.4.2 Physician's appointment of a receiver for his assets, assignment for the benefit of their creditors, or any relief taken or suffered by them under any bankruptcy or insolvency act.
- 6.5 **Effect of Termination.**
 - 6.5.1 Following expiration or termination of the Agreement for any reason, the Parties shall cooperate in the resulting transition in a manner that serves the best interests of the patients.
 - 6.5.2 The right of Physician to provide Specialty Services is contingent upon the continued validity and force of this Agreement. However, termination of this Agreement shall have no effect on Physician's Medical Staff membership or clinical privileges at the Hospital, which will continue unless terminated in accordance with the Hospital's Medical Staff Bylaws.

VII. HIPAA COMPLIANCE

- 7.1 **Protected Health Information.** Physician shall have access to medical records and other information regarding patients of Hospital or Clinic ("Protected Health Information"). Physician may use and disclose Protected Health Information only in accordance with such purposes and subject to the restrictions appearing below. Physician shall maintain the confidentiality of all Protected Health Information in compliance with all applicable federal, state and local laws and regulations, including, but not limited to, the California Confidentiality of Medical Information Act, Cal. Civ. Code §56 et seq., and the Federal Health Insurance Portability and Accountability Act of 1996, 104 P.L. 191,

Subtitle F, and regulations from time to time promulgated thereunder, ("HIPAA"). Physician agrees that Physician shall:

- 7.1.1 Not use or further disclose Protected Health Information in a manner that would violate the requirements of applicable laws or this Agreement;
- 7.1.2 Use appropriate safeguards to prevent use or disclosure of Protected Health Information except as permitted by law and the terms of this Agreement;
- 7.1.3 Report to SBHCD any use or disclosure of Protected Health Information not permitted by law or by this Agreement of which Physician becomes aware;
- 7.1.4 Ensure that any employees, subcontractors or agents to whom Physician provides Protected Health Information agree to the same restrictions and conditions that apply to Physician with respect to such Protected Health Information.
- 7.1.5 Comply with the elements of any compliance program established by SBHCD that applies to the use of or disclosure of Protected Health Information;
- 7.1.6 In accordance with and to the extent required by HIPAA, (i) make available Protected Health Information to the subject patient; (ii) make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information; and (iii) make available the information required to provide an accounting of disclosures of Protected Health Information to the subject patient;
- 7.1.7 Make internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of the United States Department of Health and Human Services for purposes of determining SBHCD's and Physician's compliance with HIPAA; and
- 7.1.8 At termination of this Agreement and after first consulting with SBHCD, if feasible, return or destroy all Protected Health Information received from, or created by the other Party and retain no copies of such Protected Health Information or, if such return or destruction is not permissible under law or the terms of this Agreement or is not otherwise feasible, shall continue to maintain all Protected Health Information in accordance with the provisions of this Section.

VIII. INSURANCE / LIMITATION OF LIABILITY

- 8.1 **Professional Liability Insurance.** Physician shall maintain professional liability insurance that provides coverage for any act of Physician that may have occurred during the term of this Agreement while providing the services under this Agreement notwithstanding the termination or expiration of the term of this Agreement. Such policies or coverage must have limits of liability per each Physician of at least One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) annual aggregate "claims made" insurance coverage. Upon termination of this Agreement, Physician shall continue the current policy, obtain prior acts coverage or "extended discovery period" or "extended reporting period" coverage, or otherwise take steps to ensure that no lapse of coverage occurs for the period of time covered by this Agreement.
- 8.2 **Limitation of Liability.** Each Party shall be responsible for their own acts and omissions and shall be liable for payment of that portion of any and all claims, liabilities, injuries, suits, and demands and

expenses of all kinds that may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by said Party, its employees, agents, or subcontractors, in the performance or omission of any act or responsibility of said Party under this Agreement. If a claim is made against both Parties, each Party will cooperate in the defense of said claim and cause its insurers to do likewise. Each Party shall, however, retain the right to take any actions it believes necessary to protect its own interests.

IX. RECORD KEEPING REQUIREMENTS

- 9.1 **General.** Physician shall maintain and provide SBHCD with information and documentation that SBHCD may require from time to time. This information and documentation shall include, but not be limited to, the recording and maintenance by Physician of time records for services provided by Physician under this Agreement, and any records deemed relevant, in the sole discretion of SBHCD, for production in accord with an investigation involving both SBHCD and Physician. Physician will complete all medical records, documentation of core measures and any forms or paperwork necessary for billing for his Specialty services within 14 days of discharge.
- 9.2 **Record Keeping Beyond the Term of Agreement.** Until the expiration of four (4) years following the performance of services under to this Agreement, Physician shall make available, upon written request, to the Secretary of the Department of Health and Human Services or, upon request to the Comptroller General, or any of their duly authorized representatives, this contract, books, documents and records of Physician that are necessary to certify the nature and extent of their costs under this Agreement.

X. INDEPENDENT CONTRACTOR

- 10.1 **Status.** Physician is entering into this Agreement as an independent contractor of SBHCD. Neither Party to this Agreement shall be deemed the employee, agent, partner, joint venturer, officer, principal or other representative of the other Party. Each Party shall have control over the hiring and firing of its own employees and shall pay all social security, withholding tax and other payroll charges applicable to its own employees. As an independent contractor, Physician may not make any claim against SBHCD under this Agreement for social security benefits, workers' compensation benefits, disability benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave, or any other employee benefits of any kind.
- 10.2 **Exercise of Control.** It is the express intention of the Parties that Physician shall perform services independently of any direction and control of SBHCD except that Physician agrees to perform all services in accordance with the specifications of this Agreement. Physician shall owe Physician's first duty to the patients seen under the terms of this Agreement, shall be responsible for them and shall exercise independent medical judgment regarding their care and treatment. SBHCD shall not supervise or oversee the performance of services under this Agreement, except to the extent of quality assurance and peer review undertaken for all physicians on SBHCD's medical staff.

XI. SBHCD COMPLIANCE PROGRAM

- 11.1 **Cooperation with Compliance Program.** Physician acknowledges that SBHCD has implemented a Compliance Program for ensuring that the provision of, and billing for, care at the Hospital and the Clinic, complies with applicable federal and state laws ("Compliance Program"). Physician agrees to adhere to, abide by and support the Compliance Program and policies promulgated therein.

- 11.2 **Legal Compliance.** Physician agrees, represents, and warrants that Physician will maintain full compliance with all applicable federal, state and local laws and regulations, including, without limitation, laws and regulations regarding billing for services. Nothing in this Agreement shall be construed to require SBHCD or Physician to make referrals of patients to one another. No payment is made under this Agreement in return for the referral of patients or in return for the ordering, purchasing, or leasing of products or services from SBHCD. Furthermore, the Parties acknowledge, agree, and warrant to the other that the compensation provided under this Agreement is not in excess of the fair market value of the services rendered.
- 11.3 **Physician Warranties.** Upon execution of this Agreement, Physician agrees, represents and warrants that Physician: (i) has not been convicted of a criminal offense related to healthcare (unless Physician has been officially reinstated into the federal healthcare programs by the Office of Inspector General (“OIG”) and provided proof of such reinstatement to SBHCD); (ii) is not currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation; or (iii) is not currently listed on the General Services Administration list of parties excluded from the federal procurement and non-procurement programs. Physician agrees that if Physician becomes involved in a pending criminal action or civil proposed debarment or exclusion related to any federal or state healthcare program, Physician shall immediately notify SBHCD administration and SBHCD shall then have the right to terminate this Agreement.

XII. GENERAL PROVISIONS

- 12.1 **Assignment.** Physician may not assign or subcontract any portion of this Agreement without the prior written consent of SBHCD.
- 12.2 **Applicable Law.** This Agreement shall be governed by and construed in force and in accordance with the laws of the State of California. Venue is San Benito County, California.
- 12.3 **Tax Consequences.** The payments made to Physician under this Agreement, as compensation or reimbursement, have tax consequences for Physician. SBHCD makes no representation or warranties regarding said tax consequences. Physician is solely and exclusively responsible for ascertaining the tax consequences and for meeting his obligations under all applicable law and regulations. In no event shall SBHCD be responsible for any taxes owed by Physician because of said payments.
- 12.4 **Notices.** Service of all notices under this Agreement shall be sufficient if hand-delivered, mailed to the Party involved at its respective address set forth in this Agreement, by certified or registered mail, return receipt requested, or sent by nationally recognized overnight courier service, addressed to the appropriate Party as follows:

SBHCD: San Benito Health Care District
Office of the Chief Executive Officer
911 Sunset Drive
Hollister, CA 95023

PHYSICIAN: Robert J. MacArthur, M.D.
114 Cadence
Irvine, CA 92618

- 12.5 **Waiver of Provisions.** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the Parties to this Agreement. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms and conditions of this Agreement or a continuing waiver of the terms and conditions waived.
- 12.6 **Cumulative of Remedies.** The various rights, options, elections, powers, and remedies of the respective Parties hereto contained in, granted, or reserved by this Agreement, are in addition to any others that said Parties may be entitled to by law, shall be construed as cumulative, and no one of them is exclusive of any of the others, or of any right or priority allowed by law.
- 12.7 **No Third Party Rights.** This Agreement is made solely for the benefit of the Parties and their respective and permitted assigns. Nothing in this Agreement shall confer any rights or remedies on any persons other than the Parties to it.
- 12.8 **Partial Invalidity.** If a lawful forum finds any part of this Agreement invalid or unenforceable, such finding shall not invalidate the remaining provisions, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.
- 12.9 **Survival.** Except as otherwise expressly provided in this Agreement, all covenants, agreements, representations, and warranties, express and implied, that, by their nature are continuing, shall survive termination of this Agreement, and remain in effect and binding upon the Parties until they have fulfilled such obligations under this Agreement.
- 12.10 **Entire Agreement/Amendment.** This Agreement, with attachments, constitutes the entire agreement between the Parties with regard to the subject matter and supersedes all previous agreements, representations, and understandings between or among the Parties with regard to the subject matter of this Agreement. This Agreement may only be amended by mutual agreement of the Parties, with such amendment in writing and signed by both Parties. This Agreement cannot be orally amended.

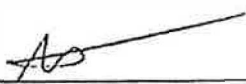
The Parties have executed this Agreement as of the Effective Date first set forth above.

SBHCD
San Benito Health Care District

PHYSICIAN
Robert J. MacArthur, M.D.

By: 

Steven M. Hannah, CEO



Robert J. MacArthur, M.D.

Date: 10/3/22

Date: 10/3/22

EXHIBIT A

Hours of Operation/Performance Parameters/Coverage

Services. Physician is contracted to perform the usual and typical professional medical activities of a board-certified orthopedic surgeon. Physician will provide orthopedic care services, which shall include hospital care for Physician's patients, surgical assist, rounds and consults for orthopedic patients, emergency room coverage and outpatient clinic-based professional services.

Coverage Hours. The coverage hours for the Hospital and operating room are: *Call Coverage begins at 7am and ends at 6:59 am the next morning.*

SBHCD, in its sole and absolute discretion, shall determine and set reasonable hours of operation for the Clinics and operating room. Notwithstanding the foregoing, SBHCD may consult with physicians providing orthopedic services, including Physician.

Schedule. Notwithstanding anything to the contrary in the Agreement, SBHCD shall engage Physician for shifts on an as-needed basis per month.

Effective December 1, 2022, Physician shall be available for shifts as specified in Section 1.1 of this Agreement.

Shift Options. Based on the foregoing, Physician's shifts for providing Specialty Services may consist of:

- (1) a 24-hour shift during which Physician is on-call for emergency services, and at the same time Physician is also on scheduled to provide coverage in the clinic and operating room services;
- (2) a 24-hour shift when Physician is on-call for emergency services and not providing coverage in the clinic; or
- (3) a shift where Physician is only providing coverage in the clinic and operating room services.

EXHIBIT B

COMPENSATION, HOUSING, EXPENSE REIMBURSEMENT

1. **Shift Coverage Fee:** As compensation for the provision of Specialty Services under this Agreement, SBHCD shall pay Physician the applicable Shift Coverage Fee outlined below on a monthly basis in accordance with normal SBHCD contract payment processes.
 - a. **Shift Coverage Fee.** Any combination of clinic/Operating Room (OR)/24-hour On-call shift coverage: **\$2,500/day.**
2. **No Separate ED On-Call Reimbursement.** There will be no additional compensation to Physician for ED On-Call Services. Accordingly, Physician will not be eligible to receive separate on-call stipend payments.
3. **Housing.** SBHCD will provide Physician with local housing accommodations while Physician is providing Specialty Services under this Agreement beginning with arrival/check-in the day before the start of the Shift, and end on the last day of Shift.
4. **Expense Reimbursement.** SBHCD will reimburse Physician for: (1) round-trip mileage at the standard Internal Revenue Service rate, between Physician's home/office and SBHCD, for use of Physician's personal vehicle, (2) standard rental car expenses, (3) round-trip coach flight expenses, and (4) for Physician provision of professional liability coverage as outlined in Section 1.3, SBHCD will reimburse Physician Seventy Dollars (\$70.00) per coverage shift under the normal monthly SBHCD payment process. Physician shall submit an itemized invoice within ten (10) days of the conclusion of each month for expenses from the prior month.

RESOLUTION NO. 2022-21

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN BENITO HEALTH CARE DISTRICT DECLARING A FISCAL EMERGENCY AND VESTING AUTHORITY TO FILE A CHAPTER 9 PETITION TO AN AUTHORIZED REPRESENTATIVE

The Board of Directors of the San Benito Health Care District (the “District”), a local health care district organized under the terms of the Local Health Care District Law (Health and Safety Code of the State of California, Division 23, Sections 32000-32492), pursuant to Section 32104 of the California Health and Safety Code, hereby adopts the following resolution this 4th day of November, 2022.

WHEREAS, the District operates certain health care facilities in the County of San Benito, California (the “County”), including Hazel Hawkins Memorial Hospital (“Hazel Hawkins”), a full service, 25-bed not-for-profit hospital, which offers a full range of inpatient and outpatient services that include emergency services, stroke care, surgical services, radiology and diagnostic imaging services, laboratory services, palliative care, physical, speech and occupational therapy, respiratory care, and a new modern birthing center;

WHEREAS, the District also operates five rural health clinics, two community health clinics, two skilled nursing facilities, four satellite lab/draw stations, and a home health agency;

WHEREAS, through its facilities, the District is the sole provider of certain health care services in the County, including the emergency and related hospital services provided at Hazel Hawkins;

WHEREAS, the District has responsibly and proactively managed its limited finances in order to operate its facilities, including the continued provision of excellent, high quality patient care without compromise to patient safety, despite a sustained reduction in net revenue;

WHEREAS, despite the efforts over the past several years of the District’s management and Board to take significant steps to reduce expenses, uncontrollable inflationary increases combined with reimbursement declines has created an operating gap and cash flow deficit that threatens the District’s fiscal viability and, if allowed to continue, could threaten patient care and patient safety;

WHEREAS, in the District’s financial circumstances, Sections 53760 through 53760.7 of the California Government Code, and in particular Section 53760.5 thereof, authorize a local public entity, such as the District, to file a petition and exercise powers pursuant to applicable federal bankruptcy law, if (a) the local public entity places an item on the agenda of a noticed public hearing on the fiscal condition of the entity to take public comment, and (b) thereafter, the local public entity declares a fiscal emergency and adopts a resolution by majority vote of the governing board at a noticed public hearing that includes findings that the financial state of the local public entity jeopardizes the health, safety, or well-being of the residents of the District’s service area absent the protections of chapter 9 (“Chapter 9”) of title 11 of the United States Code (the “Bankruptcy Code”);

WHEREAS, pursuant to Section 53760.5 of the California Government Code, such resolution authorizing a Chapter 9 filing shall also make findings that the public entity is or will be unable to pay its obligations within the next 60 days;

WHEREAS, on November 4, 2022, the District held a noticed public hearing at which the Board of Directors placed on the agenda the fiscal condition of the District, to take public comment;

WHEREAS, after considering staff analysis of the District's financial condition, the report of the District's counsel, and public comment received at the hearing held on November 4, 2022, the Board of Directors has determined that it is in the best interests of the District, its patients, creditors, citizens, taxpayers, and employees to file a petition under Chapter 9 of the Bankruptcy Code on such date as the Board determines, in consultation with counsel, to be appropriate; and

WHEREAS, in light of the foregoing, the Board of Directors has delegated to the District's Chief Financial Officer (the "Authorized Representative") the authority to file a petition under Chapter 9 of the Bankruptcy Code as set forth more fully below.

NOW, THEREFORE, BE IT RESOLVED that the District's fiscal condition creates a substantial threat to the health, safety and welfare of the residents of the District's service area; be it

FURTHER RESOLVED that the Board of Directors finds and declares the existence of a fiscal emergency of grave character and serious moment relating to the continued operation of the District and its delivery of essential health care services; be it

FURTHER RESOLVED that the Board of Directors finds that in the District's fiscal emergency the District is or will be unable to pay its obligations within the next 60 days; be it

FURTHER RESOLVED that the Board of Directors finds that the financial state of the District jeopardizes the health, safety, or well-being of the residents of the District's service area absent the protections of Chapter 9 of the Bankruptcy Code.

FURTHER RESOLVED that the Board of Directors finds that the District is insolvent on a cash flow basis in the current fiscal year, and will be insolvent in the following fiscal year as well; be it

FURTHER RESOLVED that the Board of Directors hereby resolves that the Authorized Representative's authority to file a petition under Chapter 9 of the Bankruptcy Code on behalf of the District set forth herein shall terminate if such petition is not filed by December 31, 2022, at 11:59 p.m. (Pacific Time) or such other time as the Board of Directors determines in a subsequent resolution; be it

FURTHER RESOLVED that the Board of Directors hereby authorizes and directs the Authorized Representative, on behalf of and in the name of the District, to execute and file a Chapter 9 petition with the U.S. Bankruptcy Court for the Northern District of California; be it

FURTHER RESOLVED that the Authorized Representative, and all other appropriate officials and employees of the District, are hereby authorized to execute and file all petitions, schedules, lists, and other papers, and to take any and all actions that they shall deem necessary and appropriate in connection with such Chapter 9 case, and with a view to the successful prosecution and completion of such case, including without limitation the proposal and confirmation of a plan of adjustment for the debts of the District; be it

FURTHER RESOLVED that the Board of Directors hereby authorizes and directs the Authorized Representative to continue negotiations with the District's creditors regarding the filing of such petition and the financial restructuring of the District under such chapter of the Bankruptcy Code; be it

FURTHER RESOLVED that the employment of the law firm of Fox Rothschild LLP to act as general restructuring counsel in the representation of the District, prior to and in any case commenced by the District under the Bankruptcy Code, and in all matters arising in connection therewith, is hereby approved, and the Authorized Representative is hereby authorized and empowered to retain such other attorneys, accountants, or other professionals on behalf of the District as the Authorized Representative so acting may determine to be necessary or appropriate; be it

FURTHER RESOLVED that all actions heretofore taken by the Authorized Representative, in the name of and on behalf of the District, in connection with any of the above matters are hereby in all respects ratified, confirmed, and approved; be it

FURTHER RESOLVED that the Board of Directors directs District management to investigate and recommend any and all further actions necessary to mitigate the impacts of the fiscal emergency; be it

[The remainder of this page is intentionally blank.]

FURTHER RESOLVED that this Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 4th day of November, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jeri Hernandez
President of the Board of Directors

ATTEST:

Rick Shelton
Treasurer of the Board of Directors