



**AGENDA**

**SPECIAL MEETING OF THE BOARD OF DIRECTORS**

**Monday, June 22, 2020**

**5:00 PM**

**IN AN EFFORT TO PREVENT THE SPREAD OF COVID-19 (CORONAVIRUS), AND IN ACCORDANCE WITH THE GOVERNOR'S EXECUTIVE ORDER N-29-20, THERE WILL BE NO PUBLIC LOCATION FOR ATTENDING THIS BOARD MEETING IN PERSON. MEMBERS OF THE PUBLIC MAY JOIN THE MEETING BY FOLLOWING THE INSTRUCTIONS BELOW:**

**Meeting Information**

Meeting link: <https://sangorgoniomemorialhospital-ajd.my.webex.com/sangorgoniomemorialhospital-ajd.my/j.php?MTID=me928da0cd904ed88464f5344e8ba4b17>

Meeting number: 126 136 6109

Password: 1234

**More ways to join**

Join by video system

Dial: 1261366109@webex.com

You can also dial: 173.243.2.68 and enter your meeting number.

Join by phone

+1-510-338-9438 USA Toll

Access code: 126 136 6109#

Password: 1234#

**Emergency phone number if WebEx tech difficulties**

951-846-2846

code: 8710#

**THE TELEPHONES OF ALL MEMBERS OF THE PUBLIC LISTENING IN ON THIS MEETING MUST BE "MUTED".**

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the Administration Office at (951) 769-2160. **Notification 48 hours prior to the meeting** will enable the Hospital to make reasonable arrangement to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

TAB

I. Call to Order

S. DiBiasi, Chair

II. Public Comment

Members of the public who wish to comment on any item on the agenda may submit comments by emailing [publiccomment@sgmh.org](mailto:publiccomment@sgmh.org) on or before 1:00 PM on Monday, June 22, 2020, which will become part of the board meeting record.

**NEW BUSINESS**

- III. \* **Proposed Action – Adopt Resolution No. 2020-04 regarding a Management Services Agreement with San Gorgonio Memorial Healthcare District and amendments to Hospital bylaws** S. DiBiasi A
- **ROLL CALL**

**\*\*\* ITEMS FOR DISCUSSION/APPROVAL IN CLOSED SESSION** S. DiBiasi

- Telephone conference with legal counsel regarding potential litigation  
*Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9*

IV. **ADJOURN TO CLOSED SESSION**

**RECONVENE TO OPEN SESSION**

**\*\*\* REPORT ON ACTIONS TAKEN DURING CLOSED SESSION** S. DiBiasi

V. **ADJOURN** S. DiBiasi

**\*Action Required**

In accordance with The Brown Act, *Section 54957.5*, all public records relating to an agenda item on this agenda are available for public inspection at the time the document is distributed to all, or a majority of all, members of the Board. Such records shall be available at the Hospital Administration office located at 600 N. Highland Springs Avenue, Banning, CA 92220 during regular business hours, Monday through Friday, 8:00 am - 4:30 pm.

**Certification of Posting**

I certify that on June 19, 2020, I posted a copy of the foregoing agenda near the regular meeting place of the Board of Directors of San Gorgonio Memorial Hospital, and on the San Gorgonio Memorial Hospital website, said time being at least 24 hours in advance of the special meeting of the Board of Directors  
(*Government Code Section 54954.2*).

Executed at Banning, California, on June 19, 2020



Ariel Whitley, Administrative Assistant

**TAB A**

**RESOLUTION No. 2020-04**

**RESOLUTION OF THE BOARD OF DIRECTORS OF  
SAN GORGONIO MEMORIAL HOSPITAL  
a California Nonprofit Public Benefit Corporation**

WHEREAS, SAN GORGONIO MEMORIAL HOSPITAL, a California nonprofit public benefit corporation (the “Corporation”), leased a 79-bed general acute care hospital known as San Gorgonio Memorial Hospital (the “Hospital”) from the San Gorgonio Memorial Healthcare District, a California public agency (the “District”), for a thirty-year term expiring on June 30, 2020 (the “Lease”);

WHEREAS, following the expiration of the Lease, the Corporation desires to remain engaged in the business of providing pharmacy services and turn-key management services in the day-to-day operation of the Hospital and continue to operate exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code;

WHEREAS, the Corporation has determined that it is in the Corporation’s best interests for:

- (i) the District to operate the Hospital pursuant to its existing general acute care hospital license with the assistance and cooperation of the Corporation;
- (ii) the District to remain the holder and owner of all pharmacy licenses and permits and contracts for the provision of pharmaceutical services;
- (iii) the Corporation to remain the holder and owner of all clinical laboratory certifications and contracts for the provision of laboratory services; and
- (iv) the Corporation to continue to bill for services under its existing Medicare and Medi-Cal agreements and certification numbers;

WHEREAS, the Corporation and the District have determined that the execution of a Management Services Agreement between the Corporation and the District (the “Management Services Agreement”) that provides for the Corporation’s management and operation of the Hospital following the expiration of the Lease would provide the optimal choice for meeting the needs of the communities served by the District and would be in the Corporation’s best interests;

WHEREAS, in connection with the negotiation of the Management Services Agreement, the Corporation and the District have agreed to amend the Corporation’s bylaws to reduce the number of directors from thirteen (13) to nine (9), which will give the District a majority of the votes of all of the directors constituting the Board of Directors of the Corporation (the “Corporation Board”);

WHEREAS, the “Transaction Documents” presented to the Corporation Board along herewith are substantially complete and include the Management Services Agreement and the Amended and Restated Bylaws of the Corporation (the “Bylaws”), copies and excerpts of which

are attached hereto as Exhibit A and Exhibit B, respectively; and

WHEREAS, the Corporation Board has determined it to be in the public interest, in the best interests of the Corporation, in the best interests of the communities served by the District, and in furtherance of the purposes of the Corporation, that the Corporation consummate the transactions contemplated by the Transaction Documents.

NOW, THEREFORE, the Board of Directors of the San Gorgonio Memorial Hospital hereby resolve:

1. That all the determinations, findings and conclusions of the Corporation Board described above are hereby severally ratified, confirmed, approved and adopted in all respects.

2. That the form, terms and provisions of the Transaction Documents are hereby approved in substantially the forms presented to the Corporation Board herewith.

3. That the execution, delivery and performance by the Corporation of the Management Services Agreement and such other ancillary agreements and documents that the Corporation or its officers may deem to be necessary or advisable to consummate the transactions contemplated thereby are hereby approved in all respects.

4. That the Chair of the Corporation Board (the "Authorized Representative"), acting alone, be and hereby is, authorized, empowered and directed for and on behalf of, and in the name of, the Corporation, to execute, deliver and perform the transactions contemplated by the Management Services Agreement, if the final version is in substantially the same form as attached herewith, and such further instruments, documents, certificates and filings, in each case with such changes in the terms and provisions thereof as the Authorized Representative shall deem necessary and appropriate after consultation with counsel, and to do and perform such acts and such deeds as the Authorized Representative deems necessary and appropriate in order to effectuate the purposes and intents of this resolution.

5. To amend the Section 2.01 (Goals and Purposes) and Section 4.01 (Number) of the Bylaws as set forth on Exhibit B attached hereto and incorporated herein by reference, effective as of July 1, 2020.

6. That all prior actions taken by the Authorized Representative with respect to the preparation and negotiation of the Transaction Documents, or otherwise in connection with the transactions contemplated hereby, be, and each of them hereby is, authorized, ratified and approved.

7. That the Authorized Representative and the Secretary of the Corporation Board be and hereby is authorized and empowered to execute and deliver any and all documents and instruments, and to take any and all actions, as may be necessary or in their opinion desirable, to carry into effect the intent and purposes of the foregoing resolutions.

**APPROVED AND ADOPTED** this 22<sup>nd</sup> day of June, 2020, by the Board of Directors of San Gorgonio Memorial Hospital.

Attest:

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Susan DiBiasi  
Chair

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Estelle Lewis  
Secretary

**Exhibit A**

**Management Services Agreement**

Please see the attached.

**MANAGEMENT SERVICES AGREEMENT**

**SAN GORGONIO MEMORIAL HOSPITAL**

THIS MANAGEMENT SERVICES AGREEMENT (this “**Agreement**”) is effective as of July 1, 2020 (the “**Effective Date**”) by and between San Gorgonio Memorial Hospital, a California nonprofit public benefit corporation (“**Manager**”) and San Gorgonio Memorial Healthcare District, a California public agency (the “**District**”). Manager and the District are sometimes hereinafter referred to collectively as “**Parties**” and individually as “**Party**.”

A. The District operates under the Local Health Care District Law (California Health & Safety Code §§ 32000 et seq.) within the County of Riverside and covers approximately 360 square miles, including all or portions of the Cities of Calimesa, Beaumont and Banning, and portions of the unincorporated Riverside County areas of Cherry Valley, Cabazon and Whitewater.

B. The District is the owner of a 79-bed general acute care hospital known as San Gorgonio Memorial Hospital located at 600 North Highland Springs Avenue, Banning, California, 92220 (the “**Hospital**”) and has been issued a general acute care hospital license by the California Department of Public Health (“**CDPH**”).

C. Manager is a California nonprofit public health benefit corporation formed in 1990 to operate and maintain the Hospital and provide hospital services for the benefit of the communities served by the District.

D. The District leased certain real property and certain personal property of the District to Manager for the purposes set forth above pursuant to the terms of that certain Hospital Lease Agreement dated as of July 1, 1990 (as amended, the “**Lease**”).

E. The term of the Lease is set to expire on June 30, 2020.

F. In light of the District’s desire to ensure the continued operation and improvement of the Hospital in a manner to best meet the District’s objectives of providing hospital and health care services for the benefit of the communities serviced by the District and promoting the general health of the community, the District has determined that it is in the District’s best interests and of the residents of communities served by the District for the District to operate the Hospital pursuant to its existing general acute care hospital license with the assistance of and cooperation with Manager.

G. Although the District will maintain ultimate control over the professional, administrative and other operations of the Hospital, the District wishes to retain a qualified administrative manager for the purpose of providing pharmacy services and turn-key management services in the day-to-day operation of the Hospital.

H. Manager wishes to remain engaged in the business of providing pharmacy and management services to the Hospital and continue to operate exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.



I. The District desires to retain Manager to provide pharmacy services and manage the Hospital, and Manager desires to provide such pharmacy and management services, on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth in this Agreement, the Parties agree as follows:

**ARTICLE I**

**DUTIES OF MANAGER AND THE DISTRICT**

**1.1. Recitals.** The recitals set forth above are and for all purposes shall be interpreted as being an integral part of this Agreement and are incorporated in this Agreement by reference.

**1.2. Exclusive Appointment.** The District does hereby exclusively designate and appoint Manager as its sole and exclusive agent to provide and assume responsibility for the pharmacy, management, administrative and support services required under this Agreement, and Manager does hereby accept such appointment and agrees to provide such pharmacy, administrative and management services in accordance with the terms of this Agreement.

**1.3. Applicable Laws.** The Parties shall comply with all federal, state and local laws, rules, and regulations now in force, or which may hereafter be in force, which are applicable to the District, Manager or the operations of the Hospital, and all applicable Medicare and Medicaid certification and other federal, state and local licensure requirements and standards (collectively “**Applicable Laws**”).

**1.4. Applications for Licenses.** The Parties shall submit all necessary change of control applications, notices and other materials to the appropriate governmental authority as contemplated pursuant to this Agreement. The Parties agree to cooperate with each other, and to execute such other documents and take such other actions as may be reasonably necessary or desirable, to cause the new Hospital Licenses to be issued pursuant to this Agreement.

**1.5. Hospital Licenses and Accreditation.** During the term of this Agreement, the Parties shall not voluntarily allow any of the licenses or permits to operate the Hospital or Hospital’s accreditation by The Center for Improvement in Healthcare Quality or Hospital’s certification to participate in the Medicare, Medicaid or any other federal or state health care benefit program (collectively, the “**Hospital Licenses**”) to become invalid, restricted, suspended, or otherwise adversely affected by the acts or omissions of any Party or any of its directors, officers, employees, agents or representatives.

**1.6. Hospital Employees.** Pursuant to this Agreement, Manager shall act in a professional, competent and efficient manner and shall provide a quality of service consistent with and comparable to other licensed and similarly-situated acute care hospitals in and around Riverside County, California. In connection therewith, and as part of Manager’s compensation pursuant to this Agreement (set forth in Article IV below):

(a) Employment and Supervision. Manager shall employ all personnel required in support of the Hospital, including the Hospital's executive team (collectively, the "**Hospital Employees**"). Except as set forth in this Section 1.6, Manager shall have the sole and absolute discretion to supervise, discipline, suspend, layoff and/or terminate the Hospital Employees, pursuant to Applicable Laws.

(b) CEO. Manager shall employ the Hospital's chief executive officer (the "**CEO**"). The CEO shall be approved by the Board of Directors of the District. Manager shall confer with the Chair of the Board of Directors of the District (the "**Chair**") with respect to the discipline, suspension, layoff and/or termination of the CEO, pursuant to Applicable Laws.

(c) Other Executive Employees. Manager shall employ the Hospital's chief financial officer, chief medical officer, chief nursing officer and chief operating officer (collectively, the "**Executive Employees**"). Manager shall confer with the Chair with respect to the retention, discipline, suspension, layoff and/or termination of the Executive Employees, pursuant to Applicable Laws.

(d) Pharmacy Personnel. Manager shall provide a Director of Pharmacy and qualified pharmacy staff, as required by 22 C.C.R. § 70263, 42 C.F.R. § 482.25 and other Applicable Laws.

(e) Additional Hospital Employees. Manager, on behalf of and through the District, may employ other Hospital personnel to supervise medical records, medical staff liaison, nursing, engineering, laboratory, radiology, dietary, and other services as required by 22 C.C.R. § 70005 *et seq.* and other Applicable Laws. At all times pursuant to this Agreement, such employees shall be Hospital Employees.

(f) At-Will Employees. Unless expressly agreed to in writing by the District, or pursuant to an existing written agreement of which the District has actual knowledge, all Hospital Employees shall be at-will employees, and no employees shall be hired for a specific term or time period (other than the CEO).

### **1.7. Specific Management Services.**

(a) Subject to the provisions of this Agreement, at all times during the Term (as defined in Article V below) of this Agreement, Manager shall have the exclusive right to provide such services permitted by applicable law as Manager determines in its reasonable discretion are necessary or appropriate for the management and administration of the Hospital, including but not limited to the medical care, products and services provided by the Hospital to the general public, including emergency services, pharmacy services, and all activities and operations of the Hospital and the actions relating thereto (the "**Management Services**"), and all related activities and obligations, subject to the District's ultimate authority and control over the professional, administrative and other operations of the Hospital as required under applicable conditions of participation (42 C.F.R. Section 482), California Health & Safety Code Section 1250 *et seq.*, and the regulations thereunder.

(b) The Management Services shall include the following:

(i) employing or engaging licensed professional and administrative Hospital staffing and all other staffing and employment, including the hiring and firing of all of the Hospital Employees in support of the Management Services (subject to any limitations or requirements set forth in Section 1.6 above);

(ii) the provision of pharmacy services and pharmacy personnel as set forth in clause (c) below and in accordance with Applicable Laws;

(iii) lease, maintenance and repair of the Hospital and equipment as required by the terms of this Agreement (subject to any limitations set forth in Section 9.2 below);

(iv) billing and collection services for services provided by the Hospital before and after the Effective Date of this Agreement (subject to any limitations set forth in Article III below), and payment of appropriate Hospital expenses as further provided herein;

(v) financial management services for the District and for Management Services, including the preparation and presentation of an annual budget for administration and operation of the Hospital to the Board of Directors of the District 60 days prior to the beginning of the fiscal year;

(vi) accounting services for the District, including engaging the services of a qualified accountant to conduct an audit of the books of the Hospital and prepare a report, as required under California Health & Safety Code Section 32133;

(vii) preparation of policies, procedures, and other materials and all communications regarding the Management Services;

(viii) credentialing on behalf of the District physicians and other licensed medical care professionals;

(ix) contract negotiations with payors on behalf of the District;

(x) preparation of periodic reports pertaining to the Management Services or as otherwise required by applicable law;

(xi) supervision of the provision of all patient care as required under the regulations and standards for the Hospital;

(xii) timely payment of all rents, insurance, taxes, operating costs, and all other costs and expenses relating to operation of the Management Services, before delinquency or penalty; and

(xiii) establishing credit with a vendor to purchase supplies or other items necessary for the efficient operation of the Hospital, and purchasing such supplies or other items,

either in Manager's own name or in the name of the District (subject to any limitations set forth in Section 9.2 below).

(c) Pharmacy Services.

(i) As set forth in Sections 1.6(c) and 1.7(b)(ii) above, Manager shall provide pharmacy services and the services of licensed pharmacy personnel. Initially, Manager shall ensure that a full-time pharmacist is available at the Hospital for 10-hour shifts, seven (7) days a week, to ensure proper pharmacy coverage at the Hospital. Hours of operation shall be based on Hospital need, and schedules of the pharmacists shall be provided to the Hospital one month in advance.

(ii) Manager shall ensure that each pharmacist engaged by Manager to furnish services pursuant to this Agreement:

(A) holds at all times a current, valid and unlimited license to practice pharmacy in the State of California;

(B) is at all times competently and adequately trained to provide the pharmacy services contemplated by this Agreement; and

(C) is not excluded from participation in any federally-funded health care program, including, without limitation, Medicare or Medicaid.

(iii) District shall furnish, at its expense, for the provision of the pharmacy services by Manager during the term of this Agreement, an area of sufficient size for the placement of Manager's pharmacy network hardware and software infrastructure, pursuant to the California State Board of Pharmacy and Manager's specifications. District shall provide, at its expense, such other furniture, fixtures, equipment and other expendable supplies as Manager deems reasonably necessary for the proper and efficient operation of the pharmacy, and to ensure that the pharmacy is operated consistently with Applicable Laws, industry standards and quality medicine and health care in the community.

(d) To the extent the Management Services relate to Hospital deficiencies arising prior to the Effective Date, Manager shall use commercially reasonable efforts to implement appropriate corrective action plans.

(e) The Board of Directors of Manager (the "**Manager Board**") shall be responsible for the delivery and administration of Management Services. Except as provided in Article IX below with respect to the ultimate authority of the Governing Board over the Hospital, Manager Board shall provide for and oversee Hospital operations.

**1.8. Scope of Authority.** Manager shall have the power and authority to do any and all actions that Manager determines is necessary, advisable, or proper, and consistent with the terms of this Agreement and all Applicable Laws, to provide the services pursuant to this Agreement to manage and administer the Hospital. Manager may subcontract for the provision

of any of the Management Services that Manager performs under this Agreement in the ordinary course of business or in the event of an emergency.

**1.9. Custodian of Medical Records.** The District hereby appoints Manager as the District's custodian of medical records for all Hospital inpatients and outpatients during the term of this Agreement unless otherwise agreed by the Parties in a written amendment to this Agreement. Manager shall keep and maintain the security and privacy of such medical records as required by Applicable Laws, and such medical records shall at all times be maintained so that they are readily accessible for patient care. Following the termination of this Agreement, the District agrees: (a) to continue to store and preserve Hospital medical records in accordance with the foregoing for a minimum of seven (7) years from the date of termination of this Agreement, or for such longer period as legally required, or in the case of minors, for at least one year after such minors reach the age of eighteen (18), but in no case less than seven (7) years, and in the case of a deceased patient, Manager shall continue to store and preserve the medical records for a period of five (5) years from the decedent's death; and (b) upon reasonable notice and subject to Applicable Laws and Section 1.10 of this Agreement, , to afford Manager and its representatives, including its legal counsel and accountants, full and complete access, during normal business hours, to, and the right to make copies of, the medical records in the custody by the District as provided hereunder during the Term of this Agreement.

**1.10. Confidentiality of Medical Records.** The Parties agree to comply with all Applicable Laws, and all policies, procedures, rules and regulations adopted by mutual agreement of the Parties and in effect from time to time during the Term of this Agreement, regarding the confidentiality of patient medical records and information. Without limiting the foregoing, the Parties agree to comply with the requirements of all HIPAA Rules (as defined in Exhibit A attached hereto) and the business associate agreement by and between the Parties attached hereto as Exhibit A and incorporated herein by this reference.

**1.11. Reporting Requirements.** Manager shall prepare and make available to the District monthly reports for the Hospital, including profit and loss statements, to be available to the District by the last Tuesday of the following month. Year-end profit and loss statements, as well as information required for preparation of tax returns, shall be available to the District, and at the District's direction, to its accountants, prior to One Hundred Thirty (130) days into the fiscal year following the fiscal year for which they are prepared. In addition, at the District's request, Manager shall make available to the District the following:

(a) all required federal or state agency reports required in connection with the operation the Hospital;

(b) all inspection reports, correspondence and notices from all state licensing agencies relating to the Hospital; and

(c) all correspondence and notices from all lenders and insurers relating to the Hospital.

**1.12. Insurance.** During the Term of this Agreement, Manager shall, on behalf of itself and the District and at the District's expense, maintain in full force and effect adequate insurance for the Hospital and its operations as deemed necessary and reasonable by Manager, with the District as a named or additional insured. Such programs of insurance shall include but not be limited to professional liability and malpractice coverage, director and officer liability coverage, property insurance, fiduciary liability coverage, workers' compensation, and comprehensive general liability insurance coverage, written by commercial carriers reasonably acceptable to hospitals in California.

**1.13. Operating Funds.** On or immediately before the Effective Date, Manager shall transfer into the Operating Account an amount equal to the total cash and cash equivalents on hand, less Twenty Million Dollars \$20,000,000 (the "**Holdback Amount**"). The Holdback Amount shall be used by Manager to pay for its operating costs and for expenses related to its operation of the Hospital incurred prior to the Effective Date. On and after the Effective Date, Manager shall deposit into the Operating Account any and all payments, collected receivables, or other revenue related to the operation of the Hospital prior to the Effective Date. After the Effective Date, if Manager should have insufficient funds in its own account to pay for its operating costs and for expenses incurred prior to the Effective Date, Manager may pay such costs and expenses from the Operating Account provided that such payments will not adversely affect funding required to maintain Hospital operations.

**1.14. Cooperation and Further Assurances.** The Parties agree to cooperate with each other, and to execute such other documents and take such other actions as may be reasonably necessary or desirable, in connection with the management and administration of the operations of the Hospital in compliance with Applicable Laws.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

**2.1. General Capacity to Perform.** Each of Manager and the District hereby represents and warrants to, and covenants with, the other that such Party: (a) has the full power and authority to own its property and to carry on its business as now being conducted; (b) is duly qualified to do business in and is in good standing in the State of California; and (c) has the full power and authority to execute and deliver this Agreement and to perform and comply with its terms, conditions and agreements, all of which have been duly authorized by all proper and necessary corporate action.

**2.2. Specific Capacity to Perform.** Each of Manager and the District represents and warrants to the other Party that this Agreement has been duly executed and delivered by its proper and authorized officers and constitutes the valid and legally binding obligation of such Party. Manager further represents and warrants, and the District is relying upon such representation and warranty, that Manager possesses all of the skill, knowledge and resources required to fulfill its obligations under this Agreement. Further, each of Manager and the District represent, warrant and covenant to the other Party that such Party will at all times maintain all required licenses and permits required to perform the services required hereunder.

**2.3. Hospital Property.** Each of Manager and the District represents and warrants to the other Party that as of the Effective Date, all personal and real property, equipment, furnishings, supplies, inventory and other tangible and intangible assets of the Hospital or used for Hospital Services shall be deemed the property of the District. The Parties agree to cooperate, execute such instruments, and otherwise take such acts as necessary to effectuate this representation.

**2.4. Legal Compliance.** Each of Manager and the District shall fully comply with Applicable Laws in the performance of their respective duties, powers and responsibilities hereunder.

### **ARTICLE III**

#### **FINANCIAL MANAGEMENT**

**3.1. Assignment of Claims.** To the extent permitted by law, the District hereby irrevocably assigns, exclusively to Manager, on the District's behalf, all claims, demands and rights of the District to charge, bill and collect all revenue from patients, insurance companies and payors other than Medicare, Medicaid, and other governmental payors, as described in Section 3.4 below. The District agrees to execute any and all documents necessary to secure and perfect Manager's interest in such claims, revenue and accounts receivable.

**3.2. Operating Account.** All revenue received (other than Governmental Payments, as defined below) shall be directly deposited in a bank account or accounts (the "**Operating Account**") established by Manager in the name of the District at such bank as Manager may from time to time designate in its sole and absolute discretion (the "**Bank**"). Manager shall designate such persons who shall have authority to write checks upon or otherwise authorize the disbursement of funds from such Operating Account ("**Authorized Signer**"). Manager shall have the sole and exclusive right to designate an Authorized Signer, and to write checks upon and authorize disbursements from such Operating Account, to pay the Hospital Expenses (as defined in Section 4.1 below) and the Management Fee (as defined in Section 4.2 below).

**3.3. Non-Governmental Payments.** The Parties agree to establish a deposit account (the "**Non-Governmental Payments Lockbox Account**") into which all revenue from patients, insurance companies and payors other than Medicare, Medicaid, and other governmental payors ("**Non-Governmental Payments**") shall be deposited, to the extent possible. The District agrees to do all things necessary or desirable by Manager to authorize the deposit of Non-Governmental Payments into the Non-Governmental Payments Lockbox Account via electronic funds transfer throughout the Term of this Agreement. If either of the Parties receives any Non-Governmental Payments in the form of checks, it will use its best efforts to promptly deposit such checks into the Non-Governmental Payments Lockbox Account. The District agrees to enter into and maintain a depository agreement with the Bank, in a form reasonably acceptable to Manager and the District, and consistent with this Agreement and Applicable Laws, pursuant to which the Bank shall be instructed that all Non-Governmental Payments received into the Non-Governmental Payments Lockbox Account shall be swept and transferred to the Operating Account at least once each week. The Non-Governmental Payments Lockbox Account will be in the name of the

District. However, the District shall not withdraw from or write drafts or checks against the Non-Governmental Payments Lockbox Account. The District agrees that it will not, during the Term of this Agreement, take any actions to rescind, suspend, or otherwise interfere with the sweep and transfer of funds from the Non-Governmental Payments Lockbox Account to the Operating Account, nor will the District or its agents remove, withdraw or authorize the removal or withdrawal of any funds from the Non-Governmental Payments Lockbox Account for any purpose except to accomplish the transfer of funds addressed above, nor will the District or its agents rescind, replace, or cause or agree to the rescission, termination or amendment of the Non-Governmental Payments Lockbox Account depository agreement or any standing order relating thereto.

**3.4. Governmental Payments.** As required pursuant to the Applicable Laws, the Parties agree to establish an additional and separate deposit account (the “**Governmental Payments Lockbox Account**”) into which all checks, money orders, and other instruments, or electronic funds transfers received from Medicare, Medicaid and other health care benefit programs established by federal or state law which require that payments for health care services be made to the providers of such services (“**Governmental Payments**”) shall be deposited, to the extent possible. Unless otherwise agreed by the Parties, and subject to the capabilities of governmental payors, the District agrees to do all things necessary or desirable by Manager to authorize the deposit of Governmental Payments into the Governmental Payments Lockbox Account via electronic funds transfer throughout the Term of this Agreement. If either Party receives any Government Payments in the form of checks, it will use its best efforts to promptly deposit such checks into the Governmental Payments Lockbox Account. The District agrees to enter into and maintain a depository agreement (“**Depository Agreement**”) with the Bank, in a form reasonably acceptable to Manager and the District, and consistent with this Agreement and Applicable Laws, pursuant to which the Bank shall be instructed that all Governmental Payments received into the Governmental Payments Lockbox Account shall be swept and transferred to the Operating Account at least once each week. For purposes of complying with restrictions on assignment of Medicare payments under Applicable Laws, the Governmental Payments Lockbox Account will be in the name of the District. However, the District shall not withdraw from or write drafts or checks against the Governmental Payments Lockbox Account. The District agrees that it will not, during the Term of this Agreement, take any actions to rescind, suspend, or otherwise interfere with the sweep and transfer of funds from the Governmental Payments Lockbox Account to the Operating Account, nor will the District or its agents remove, withdraw or authorize the removal or withdrawal of any funds from the Governmental Payments Lockbox Account for any purpose except to accomplish the transfer of funds addressed above, nor will the District or its agents rescind, replace, or cause or agree to the rescission, termination or amendment of the Governmental Payments Lockbox Account depository agreement or any standing order relating thereto.



**ARTICLE IV**

**DISBURSEMENT OF  
HOSPITAL EXPENSES AND MANAGEMENT FEE**

**4.1. Hospital Expenses.** The District hereby grants Manager the right to make withdrawals from the Operating Account when and as required to pay expenses pertaining to the operations of the Hospital on or after the Effective Date, including the following: (a) all Hospital Employee-related costs and expenses (including but not limited to salaries, bonuses, payroll and withholding taxes, health insurance disability, social security contributions, and premiums for all government mandated insurance programs); (b) reasonable out-of-pocket expenses incurred in connection with the Management Services provided pursuant to this Agreement; (c) fees to third parties; and (d) other reasonable expenses incurred on behalf of the Hospital (collectively, the “**Hospital Expenses**”); provided, however, that all such expenses shall be attributed to line items in the annual budget approved by the District except in the case of an emergency resulting in an unforeseeable expense. Manager shall prepare an itemized report of such Hospital Expenses on a monthly basis and submit it to the District by the [twentieth (20<sup>th</sup>)] day of the following month. Within thirty (30) days after delivery of such report, the District shall notify Manager in writing of any dispute regarding the expenses itemized in such report. In the event of any such dispute, Manager and the District shall designate representatives to negotiate a resolution to such dispute in good faith.

**4.2. Management Fee.** As consideration for the services rendered pursuant to this Agreement, the District shall pay for Manager’s operating costs and for expenses incurred by Manager prior to the Effective Date as provided in Section 1.13. In addition, District hereby authorizes Manager to make monthly withdrawals from the Operating Account to pay itself a management fee (the “**Management Fee**”). The Management Fee commencing on the Effective Date through Fiscal Year 2021 (July 1, 2020 through June 30, 2021) shall be Twenty Five Thousand Dollars \$25,000 per month. The Management Fee for each successive fiscal year of the Term shall be subject to adjustment by mutual written agreement of the Parties prior to the beginning of each such fiscal year, to reflect, among other things, a change in Manager’s operating costs and/or the impact of inflation.

**ARTICLE V**

**TERM AND TERMINATION**

**5.1. Term.** This Agreement shall commence on July 1, 2020 (the “**Effective Date**”). The term of this Agreement shall continue for a period of up to five (5) years from the Effective Date (the “**Term**”). Subject to earlier termination as set forth in Section 5.2, this Agreement shall automatically renew for successive one-year terms, unless either Party provides notice to the other Party of its desire not to automatically renew this Agreement at least One Hundred Eighty (180) days prior to the end of the then current term.

**5.2. Termination.**

(a) If either Party breaches any material provision of this Agreement, then the non-breaching Party may, at its option, upon thirty (30) days written notice to the breaching Party, unless the breaching Party has cured said breach before said thirty (30) days have elapsed or immediately in the case of danger to patient care, (i) terminate this Agreement, or (ii) maintain this Agreement in full force and effect, and in either case seek damages or other relief appropriate thereto.

(b) This Agreement may be terminated upon mutual agreement of the Parties.

(c) Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except those rights and obligations that have accrued or expressly survive such termination or expiration.

**5.6. Payments Upon Termination.** The District shall remain obligated to (a) reimburse Manager for all expenses and fees (including accrued expenses and fees) due and owing as of the effective date of termination or expiration of this Agreement, as contemplated by Section 4.1 herein, and (b) compensate Manager for all Management Fees due and owing as of the effective date of termination or expiration of this Agreement, as contemplated in Section 4.2 herein. The District shall pay Manager all such amounts within fifteen (15) days from the effective date of termination or expiration of this Agreement.

**5.7. Transition of Management Upon Termination.** Upon the expiration or earlier termination of this Agreement, Manager and the District shall use commercially reasonable efforts to arrange for the transition of management of the Hospital to the District or its designee in a safe and orderly manner, with the primary goal of avoiding jeopardy to the health and safety of all patients of the Hospital. For the avoidance of doubt, the District shall be responsible for all operating expenses of the Hospital accruing on and after the effective date of termination or expiration.

**ARTICLE VI  
INDEMNITIES**

**6.1. Indemnification.** Each Party shall indemnify and hold the other Party and its respective directors, officers, employees, agents, and representatives (the “**Indemnified Parties**”) harmless from any and all liabilities, obligations, claims, causes of action, contingencies, damages, costs and expenses, including, without limitation, all court costs and attorneys’ fees (whether as a result of direct claims or third party claims that the Indemnified Parties or any of them may suffer or incur) of any nature arising out of or relating to: (a) the material breach of any of the representations, warranties, covenants or agreements made by or on behalf of the indemnifying Party, or of anyone acting for or on behalf of the indemnifying Party, hereunder; or (b) any negligent act or omission of the indemnifying Party, or of anyone acting for or on behalf of the indemnifying Party, in performing services hereunder.

**ARTICLE VII  
NOTICE**

All notices, requests and approvals required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered, (ii) deposited in the United States mail, with postage prepaid, registered or certified, as follows:

If to the District: San Gorgonio Memorial Healthcare District  
600 North Highland Springs Avenue  
Banning, California 92220  
Attn: District Board Chair

With a copy to: Arent Fox LLP  
555 West 5th Street, 48th Floor  
Los Angeles, California 90013  
Attn: Thomas E. Jeffry Jr.  
Email: Thomas.Jeffry@arentfox.com

If to Manager: San Gorgonio Memorial Hospital  
600 North Highland Springs Avenue  
Banning, California 92220  
Attn: CEO

With a copy to: Best Best & Krieger LLP  
500 Capitol Mall  
Sacramento, California 95814  
Attn: Cathy Deubel Salenko  
Email: Cathy.Salenko@bbklaw.com

Any notice, request or approval required or permitted to be given hereunder shall be deemed to be given and received by the addressee thereof upon personal delivery or on the third business day after the mailing thereof, as the case may be. Either Party may change its address for these purposes by giving notice of such change to the other Party in the manner hereinabove provided.

**ARTICLE VIII**

**INDEPENDENT CONTRACTOR**

In entering into this Agreement, and in acting in compliance herewith, Manager is at all times acting and performing as an independent contractor duly authorized to perform the services required of it hereunder as the District's agent. Nothing contained in this Agreement or any agreements, instruments, documents or transactions contemplated hereby shall constitute or be construed to create a partnership, joint venture, general agency, or similar relationship between

the District, or its successors or permitted assigns, and Manager, or its successors or permitted assigns.

## **ARTICLE IX**

### **HOSPITAL GOVERNING BODY**

**9.1 Governing Body.** The Board of Directors of the District (the “**District Board**”) shall serve as the governing body of the Hospital, as that term is used in Section § 70035 of Title 22 of the California Code of Regulations.

**9.2 District Authority.** Notwithstanding the authority delegated to Manager under Sections 1.7 and 1.8 hereof:

(a) **Medical Staff; Care of Patients.** The District Board shall retain overall operational control of the Hospital through the exercise of all power and responsibilities required to be reserved to the board of directors of a licensed general acute care hospital by the State of California, which cannot, under law, be properly delegated. The District Board specifically has the authority to approve the Hospital’s medical staff bylaws, rules and regulations and fair hearing plan as required under the District Bylaws, and make all decisions related to appointment or reappointment to medical staff membership or the granting of clinical privileges, or related to the denial, revocation, suspension or other adverse decision with respect to such membership or clinical privileges, as set forth in the District Bylaws and the medical staff bylaws of the Hospital. The District Board shall be ultimately responsible for the quality of medical care in the Hospital, as set forth in the District Bylaws and the medical staff bylaws of the Hospital.

(b) **Power to Commit the Hospital and District.** To the extent permitted by Applicable Laws, the District Board from time to time shall establish policies that specify limitations on the authority of the CEO, chief financial officer, or any other officer to commit the Hospital to the expenditure of sums in excess of a dollar amount established by the District Board. In addition to having the final authority and responsibility for the conduct of the Hospital as specified in Sections 70000 *et seq.* of Title 22 of the California Code of Regulations, the District Board or its designee shall have the following specific authority:

(i) Approval of capital and operating budgets for the Hospital, including any material changes thereto (for purposes of this clause (a), “material” is defined as any amount greater than five percent (5%) of the monthly budget for that line item;

(ii) Approval of the appointment of the CEO, as required by the California Local Health Care District Law, Health & Safety Code §§ 32000 *et seq.*, or any successor law thereto (the “**Health Care District Law**”);

(iii) Amendment of the Hospital’s quality improvement plan and oversight of the Hospital’s quality improvement committee;

(iv) Establishment of annual goals and objectives for implementing this

Agreement;

(v) The incurrence of any new debt or encumbrance by the Hospital or the District (for purposes of this clause (a), “debt or encumbrance” shall exclude trade debt or accounts payable incurred in the ordinary course of business);(vi) The disposal or transfer of District assets with any salvageable value; and

(vii) The lease of capital equipment or operating equipment with a value greater than the District approved signing authority limit of the CEO or with an expected length of use greater than thirty (30) days.

(c) **Powers Delineated in the District Bylaws.** The District Board reserves to itself the power and authority delineated in the District Bylaws and such other powers as may be specified by the Health Care District Law as being reserved to the board of a California local health care district. In furtherance of such reserved power and authority, the following actions shall not be taken unless approved by the District Board:

(i) A change in the Hospital’s mission statement;

(ii) A change in the Hospital’s charity care policy;

(iii) A change in the Hospital’s name;

(iv) The establishment of any affiliates of the Hospital or the District;

(v) The closure of the Hospital; and

(vi) A change in the use of District tax revenues or alteration of the budget established at the commencement of this Agreement pertaining to the District Board’s administrative affairs.

**9.3 Composition of the Board of Directors of Manager.** As of the Effective Date, the District Board consists of five (5) publicly elected directors and the Manager Board consists of nine (9) directors, which includes the five (5) publicly elected directors of the District Board and four (4) appointed directors, all of which have full voting rights and shall count for purposes of establishing a quorum. Manager hereby agrees that, during the Term of this Agreement, those portions of the bylaws of Manager that relate to the number, qualification, voting rights and election of directors shall be as set forth on Exhibit B hereto and shall remain unchanged. Any amendment to that portion of the bylaws of Manager without the prior consent of District shall be deemed to be a material breach of this Agreement.

**9.4 Cooperation with Manager Board.** Except in an emergency and subject to Applicable Laws and confidentiality concerns, the District Board shall confer with the Manager Board in the exercise of the District Board’s powers and authority over the operations of the Hospital.

## ARTICLE X

### DISPUTE RESOLUTION

#### 10.1 Dispute Resolution.

(a) Procedures. The Parties shall use their best good faith efforts to resolve disputes quickly and in an informal, professional and business-like manner. If the Parties are unable to resolve the dispute, the Parties shall comply with the following procedures:

1. Meet and Confer. The Parties agree to meet and confer on any issue that is the subject of a dispute under a specific term of this Agreement (“**Meet and Confer**”), as a condition precedent to the mediation and arbitration provisions of subsections (2) and (3) of this Article X. Any ambiguity or uncertainty as to whether a dispute is subject to the procedures set forth in this Article X shall be resolved in favor of the application of these provisions. The Party seeking to initiate the Meet and Confer procedures (“**Initiating Party**”) shall give written notice to the other Party, describing in general terms the nature of the dispute, the Initiating Party’s position and a summary of the evidence and arguments supporting its position and identifying one or more individuals with authority to settle the dispute on such Party’s behalf. (The individuals so designated by a Party shall be known as the “**Authorized Individuals**.”)

The Party receiving such notice (the “**Responding Party**”) shall have ten (10) business days within which to respond. The response shall be in writing, shall include the Responding Party’s position, a summary of the evidence and arguments supporting its position and shall also identify one or more Authorized Individuals with authority to settle the dispute on such Party’s behalf. The Authorized Individuals for the Parties shall meet at a mutually acceptable time and place within thirty (30) days of the Initiating Party’s notice and thereafter as often as they deem reasonably necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days of the Initiating Party’s notice, or if the Responding Party fails to timely provide its written response or will not meet within thirty (30) days, the Parties shall submit the dispute to mediation in accordance with Section 10.1(a)(2) below and shall give the other Party written notice that the matter is being submitted to mediation. All deadlines specified in this Meet and Confer provision may be extended by mutual agreement.

2. Mediation. Within ten (10) business days of the notice of submission to mediation, the Parties shall agree upon a mediator. If the Parties are unable to agree, a mediator shall be appointed by the American Arbitration Association, San Francisco office. In consultation with the mediator selected, the Parties shall promptly designate a mutually convenient time and place for the mediation, such time to be no later than thirty (30) days after selection of the mediator. At the mediation, each Party shall be represented by persons with authority to negotiate a resolution of the dispute and may be represented by counsel. The mediator shall determine the format for the meetings. The mediation session shall be private. The fees and expenses of the mediator shall be borne equally by the Parties. The entire mediation process shall be confidential and the privileges and protection of Evidence Code Sections 1115 through 1128 shall apply. Prior to commencement of mediation, if requested by either Party or mediator, the Parties and the mediator shall execute a written confidentiality agreement. If, as the result of mediation, a voluntary settlement is reached

and the Parties agree that such settlement shall be reduced to writing, the mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and have the same force and effect as, an arbitration award and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction. The place of mediation shall be Riverside County, California.

3. Arbitration. If the Parties cannot resolve a dispute after exhaustion of the Meet and Confer and the mediation procedures as set forth above, they shall submit it to binding arbitration in accordance with the then prevailing rules of the American Arbitration Association and judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction in Riverside County, California. The arbitrator shall be knowledgeable in and familiar with health care issues, shall have jurisdiction to resolve disputes only in accordance with the provisions and limitations of this Agreement, shall follow California and federal substantive rules of law to the extent applicable and not inconsistent with this Agreement, shall require the testimony be transcribed at the request of any Party, and shall render a decision in writing accompanied by finding of facts and a statement of reasons for the decision. The decision of the arbitrator shall be final and non-appealable. The place of arbitration shall be Riverside County, California.

(b) Provisional Remedies. Notwithstanding the provisions of Section 10.1(a)(3) above, each Party shall have the right to seek provisional remedies from a court of competent jurisdiction in Riverside County, California as provided by California law. The provisions of this Section 10.1(b) shall survive the termination of this Agreement.

## **ARTICLE XI**

### **MISCELLANEOUS**

**11.1. Waiver.** The waiver by a party of any breach of any term, covenant or condition herein contained shall not be deemed to be a continuing waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance by a party of performance by the other shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of this Agreement, other than the failure to perform the particular duties so accepted, regardless of knowledge of such preceding breach at the time of acceptance of such performance.

**11.2. Binding Nature of Agreement.** Subject to Section 11.4 below, this Agreement shall be binding upon and shall be for the benefit of the parties hereto and their respective successors and assigns.

**11.3. Entire Agreement.** This Agreement, and all exhibits referenced herein and attached hereto, contain the entire agreement between the Parties relating to the subject matter contained herein and supersede any prior oral or written communication between them concerning its terms. Any waiver or modification of this Agreement shall be effective only if in writing and signed by the party against whom such waiver or modification is sought to be enforced.

**11.4. Assignability.** Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party.

**11.5. Preparation of Agreement.** Each of the Parties acknowledges that they have had an opportunity to obtain counsel of their own choosing, and that both of them have read this Agreement, understand the terms used herein, and consequences thereof and that they have freely and voluntarily entered into this Agreement. Each of the parties is willing to and does hereby assume joint responsibility for the form and composition of each and all of the contents of this Agreement, and they further agree that this instrument shall be interpreted as though each of the parties participated equally in the composition of this instrument, and each and every part thereof.

**11.6. Severability.** In the event that any covenant, condition or other provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**11.7. Counterparts.** This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute and be one and the same instrument.

**11.8. Governing Law.** The rights and duties of the parties and the construction of this Agreement shall be governed by the laws of the State of California.

**11.9. Benefit.** This Agreement is not intended to confer upon any person or entity other than Manager and the District any rights, obligations or remedies hereunder.

**11.10. Headings.** The descriptive heading of the articles and sections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not control or affect in any way the meaning or interpretation of this Agreement.

**11.11. Access to Books and Records.** As an independent contractor of the District, Manager shall, in accordance with 42 U.S.C. §1395(v)(1)(I) and 42 C.F.R. § 420.300 *et seq.*, until the expiration of four (4) years after the furnishing of Medicare reimbursable services pursuant to this Agreement, upon proper written request, allow the Comptroller General of the United States, the Secretary of the Department of Health and Human Services, and their duly authorized representatives access to this Agreement and to Manager's books, documents and records necessary to certify the nature and extent of costs of Medicare reimbursable services provided under this Agreement. In accordance with such laws and regulations, if Medicare reimbursable services provided by Manager under this Agreement are carried out by means of a subcontract with an organization related to Manager, and such related organization provides the services at a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, then the subcontract between Manager and the related organization shall contain a clause comparable to the clause specified in the preceding sentence.



**11.12. Referrals.** The parties acknowledge that none of the benefits granted Manager is conditioned on any requirement that Manager or any shareholders and affiliates make referrals to, be in a position to make or influence referrals to, or otherwise generate business for, the District.

**11.15. Execution of Agreement.** This Agreement shall not become effective or in force until all of the required signatories below have executed this Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have executed this Management Services Agreement on the day and year first above written.

**MANAGER:**

**SAN GORGONIO MEMORIAL HOSPITAL**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**DISTRICT:**

**SAN GORGONIO MEMORIAL HEALTHCARE DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### **BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Agreement (this “**BAA**”) is effective as of July 1, 2020 (the “**Effective Date**”), and is entered into by and between San Gorgonio Memorial Hospital, a California nonprofit public benefit corporation (“**Business Associate**”) and San Gorgonio Memorial Healthcare District, a California local health care district (“**Covered Entity**”). Business Associate and Covered Entity are sometimes hereinafter referred to collectively as “**Parties**” and individually as “**Party**.”

Covered Entity and Business Associate mutually agree to the terms of this BAA to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act, and their implementing regulations, 45 C.F.R. Parts 160 and 164, (collectively, the “**HIPAA Rules**”).

This BAA is entered into in conjunction with that certain Management Services Agreement dated as of July 1, 2020 by and between the Parties (the “**Management Services Agreement**”).

#### **1. Definitions.**

(a) Catch-all Definition. The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Designated Record Set, Disclosure, Health Care Operations, Individual, Secretary, Security Incident, Subcontractor, and Use.

(b) Specific Definitions.

(i) “**Protected Health Information**” or “**PHI**” shall have the same meaning as that term in the HIPAA Rules and shall refer to PHI that is created, received, maintained or transmitted on behalf of Covered Entity.

(ii) “**Services**” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associates which may be in effect now or from time to time (including, without limitation, the Management Services Agreement), or, if no such agreement is in effect, the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in 45 C.F.R. § 160.103.

**2. Permitted Uses and Disclosures.** Business Associate may use or disclose PHI it creates or receives for or from Covered Entity only as follows:

(a) Functions and Activities on Covered Entity’s Behalf. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, Services for, or on behalf of, Covered Entity as specified in this BAA or the Management Services Agreement, or as Required by Law, provided that such use or disclosure would not violate Subpart E of 45 C.F.R. Part 164 (the “**Privacy Rule**”) if done by Covered Entity, except as set forth in Section 2.(b).

(b) **Business Associate's Operations.** Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may disclose PHI for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if the disclosure is Required by Law, or Business Associate obtains reasonable assurances from the person or organization to whom the information is disclosed that it shall remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person or organization, and the person or organization notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**3. Prohibition on Unauthorized Use or Disclosure.** Business Associate shall neither use nor disclose PHI, except as permitted by this BAA, the Management Services Agreement or as otherwise Required by Law.

**4. Information Safeguards.** Business Associate shall comply with 45 C.F.R. Part 164, Subpart C (the "Security Rule") and develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to prevent use or disclosure of PHI other than as provided for by this BAA.

**5. Subcontractors and Agents.** If Business Associate engages any subcontractor or agent to fulfill the purposes the Management Services Agreement, or for Business Associate's proper management and administration, and such engagement includes the creation, receipt, maintenance, or transmission of PHI, Business Associate shall require the subcontractor or agent to provide reasonable assurance, evidenced by written contract, that the subcontractor or agent shall comply with the substantially the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI.

**6. Other Privacy Obligations.** To the extent Business Associate is required by this BAA or the Management Services Agreement to carry out an obligation of Covered Entity under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of that subpart that apply to Covered Entity in the performance of such obligation.

**7. Access to PHI.** To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees to provide to Covered Entity, in a time and manner designated by Covered Entity, any PHI about the individual that is in Business Associate's Designated Record Set, so that Covered Entity may meet its access obligations under 45 Code of Federal Regulations § 164.524.

**8. Amendment of PHI.** To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall, upon receipt of notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of the PHI in Business Associate's Designated Record Set, so that Covered Entity may meet its amendment obligations under 45 Code of Federal Regulations § 164.526.

**9. Disclosure Accounting.** So that Covered Entity may meet its disclosure accounting obligations under 45 Code of Federal Regulations § 164.528:

(a) Disclosure Tracking. Business Associate shall record for each disclosure of PHI: (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of the disclosure (items i-iv, collectively, the “**Disclosure Information**”). Business Associate shall make this Disclosure Information available to Covered Entity in a time and manner designated by Covered Entity.

(b) Exceptions from Disclosure Tracking. Business Associate need not record Disclosure Information or otherwise account for disclosures of PHI (i) for the purpose of Covered Entity’s payment activities, treatment of the individual, or health care operations as provided under the HIPAA Rules, (ii) to the individual who is the subject of the PHI disclosed or to that individual’s personal representative; (iii) pursuant to a HIPAA-compliant authorization that is signed by the individual who is the subject of the disclosure, or by that individual’s personal representative; (iv) for notification for disaster relief purposes; (v) for national security or intelligence purposes; (vi) to law enforcement officials or correctional institutions regarding inmates or other persons in lawful custody; (vii) in a limited data set as defined under the HIPAA Rules; (viii) incident to a use or disclosure that Business Associate is otherwise permitted to make by this BAA; and (ix) otherwise excepted from disclosure accounting as specified in 45 C.F.R. § 164.528.

(c) Disclosure Tracking Time Periods. Business Associate must have available for Covered Entity the Disclosure Information required by Section 9(a) for the six (6) years preceding Covered Entity’s request for the Disclosure Information (except Business Associate need have no Disclosure Information for disclosures occurring before the Effective Date).

**10. Inspection of Books and Records.** Business Associate shall make its internal practices, books, and records, relating to its use and disclosure of the PHI, available to Covered Entity and to the Secretary to determine compliance with the HIPAA Rules or this BAA.

**11. Breach and Security Incident Reporting.**

(a) Privacy Breach. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this BAA. Upon learning of such non-permitted or violating use or disclosure, Business Associate shall make the report to Covered Entity without unreasonable delay and in no case more than 15 business days following detection of the breach. Business Associate’s report shall at least:

(i) Provide a brief description of the breach, including the date of the breach and the date of the discovery of the breach;

(ii) Identify the PHI used or disclosed;

(iii) Identify what corrective action Business Associate took or will take to prevent further non-permitted or violating uses or disclosures;

(iv) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted or violating use or disclosure; and

(v) Provide such other information, including a written report, as Covered Entity may reasonably request.

**12. Security Incidents.** Business Associate shall report to Covered Entity any Security Incident relating to electronic PHI of which Business Associate becomes aware. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, attempts to log on to Business Associate's system to enter a database with an invalid password or username, denial-of-service attacks that do not result in a server being taken off-line and malware (e.g., worms, viruses), and Covered Entity acknowledges and agrees that this section shall constitute notice, and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such incident results in unauthorized access, use or disclosure of PHI.

**13. Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity from any and all liability, claim, penalty, lawsuit, injury, loss, expense or damage resulting from a breach of Protected Health Information resulting from Business Associate's acts or omissions under this BAA. Notwithstanding the foregoing, Business Associate's liability under this BAA is limited to the coverage amounts actually afforded Business Associate under the policy of insurance set forth in paragraph 14 below. To the extent that Business Associate continues to maintain PHI in accordance with Section 15(b) of this BAA, this indemnification obligation shall survive termination of the BAA.

**14. Business Associate's Insurance.** Business Associate shall obtain at its sole expense, cyber liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate. The cyber liability insurance shall cover Breaches, among other things. Business Associate shall maintain such insurance for the term of this BAA and shall provide Covered Entity with a copy of certificates of insurance or other written evidence of the insurance policy upon request by Covered Entity. In the event of any modification, termination, expiration, non-renewal or cancellation of any such insurance policy, Business Associate shall give written notice thereof to Covered Entity not more than ten (10) days following Business Associate's receipt of insurer's acknowledgement of receipt of non-renewal or cancellation, or notification of modification, expiration, or termination.

**15. Termination of BAA.**

(a) Right to Terminate for Cause. Upon Covered Entity's determination of a breach of this BAA by Business Associate, Covered Entity shall either:

(i) Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach within thirty (30) calendar days of such notification; provided that if Business Associate fails to cure the breach within such time, Covered Entity may terminate this BAA and the Management Services Agreement upon thirty (30) calendar days written notice to Business Associate; or

(ii) Upon thirty (30) calendar days written notice to Business Associate, terminate this BAA and the Management Services Agreement if Covered Entity determines that such breach cannot be cured.

(b) Obligations upon Expiration or Termination.

(i) Return or Destruction. Upon termination or expiration of this BAA and the Management Services Agreement, Business Associate shall, if feasible, return to Covered Entity or destroy all PHI, in whatever form or medium (including in any electronic medium under Business Associate's custody or control). Business Associate shall identify any PHI that cannot feasibly be returned to Covered Entity or destroyed, and shall limit its further use or disclosure of that PHI to those purposes that make return or destruction of that PHI infeasible.

**16. Governing Law.** The governing law and jurisdiction of the Management Services Agreement shall apply to this BAA.

**17. Conflicts.** The terms and conditions of this BAA shall override and control any conflicting term or condition of the Management Services Agreement. All non-conflicting terms and conditions of the Management Services Agreement remain in full force and effect.

**18. No Third Party Beneficiaries.** Nothing expressed or implied in this BAA or the Management Services Agreement is intended to confer, nor shall it confer, upon any person any rights, remedies, obligations or liabilities other than those explicitly detailed in this BAA or in the Management Services Agreement.

**19. Notices.** Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party to the address provided in this Section 5.2, or other addresses as the Parties may request in writing by notice given pursuant to this Section 5.2. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

If to Covered Entity:                      San Geronio Memorial Healthcare District  
600 North Highland Springs Avenue  
Banning, California 92220  
Attn: District Board Chair

With a copy to: Arent Fox LLP  
555 West 5th Street, 48th Floor  
Los Angeles, California 90013  
Attn: Thomas E. Jeffry Jr.  
Email: Thomas.Jeffry@arentfox.com

If to Business Associate: San Gorgonio Memorial Hospital  
600 North Highland Springs Avenue  
Banning, California 92220  
Attn: CEO

With a copy to: Best Best & Krieger LLP  
500 Capitol Mall  
Sacramento, California 95814  
Attn: Cathy Deubel Salenko  
Email: Cathy.Salenko@bbklaw.com

**20. Survival.** The respective rights and obligations of Business Associate under Section 15(b) of this BAA shall survive the termination of this BAA.

**21. Amendment.** To the extent applicable, amendments or modification to the HIPAA Rules may require amendments to certain provisions of this BAA. Amendments shall only be effective if executed in writing and signed by the Parties.

**22. Severability.** The provisions of this BAA shall be severable, and if any provision shall be determined to be invalid, void or unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

**23. Counterparts.** This BAA may be executed in separate counterparts, none of which need contain the signatures of both Parties, and each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute and be one and the same instrument. The Parties further agree that facsimile signatures or signatures scanned into .pdf (or similar) format and sent by e-mail shall be deemed original signatures.

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SIGNATURE PAGE TO FOLLOW**



IN WITNESS WHEREOF, Covered Entity and Business Associate execute this BAA in multiple originals to be effective on the Effective Date set forth herein.

**MANAGER:**

**SAN GORGONIO MEMORIAL HOSPITAL**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**DISTRICT:**

**SAN GORGONIO MEMORIAL HEALTHCARE DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT B**

**BYLAW PROVISIONS**

**HOSPITAL CORPORATION BYLAWS**

**Section 4.01 Number**

This Corporation shall have nine (9) regular Directors, who shall be known collectively as the Board of Directors. Members of the Board of Directors shall be elected, as set forth in Article 5, provided that each individual who takes office as a Director of the District shall be an *ex officio* Director of the Corporation, with full voting rights and shall count for purposes of establishing a quorum. All of the Directors, including *ex officio* Directors, shall be subject to the same terms and provisions of these Bylaws and applicable law except as expressly provided to the contrary by these Bylaws. Subject to the discretion of the Board, two members of the Board of Directors may be members of the Medical Staff of San Gorgonio Memorial Hospital.

The Chief of Staff shall be an invited guest at all meetings of the Board of Directors, but shall excuse himself or herself from Board meetings when requested to do so by the Chair, and may not attend closed session meetings of the Board unless his or her experience and expertise is required by the Board and he or she is asked to attend by the Board. As the Chief of Staff is not a Director, the Chief of Staff shall have no voting rights and shall not count for purposes of establishing a quorum. The Chief of Staff shall abide by all policies of the Corporation applicable to Directors with respect to conflicts of interests and maintaining the confidentiality of trade secret, competitively sensitive information and closed session information.

**Section 4.03 Restriction on Interested Persons and Employees as Directors**

Subject to the additional restrictions in Section 4.18 of these Bylaws, no more than forty-nine percent (49%) of the persons serving on the Board may be interested persons. An interested person is (a) any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, such as an independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. Employees of the Corporation or District may not serve on the Board. However, except as provided to the contrary by Government Code Section 1090, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the Corporation.

**Section 4.13 Quorum**

A quorum shall consist of a majority of the members of the Board of Directors, unless a greater number is expressly required by statute, by the Articles of Incorporation of this Corporation, or by these Bylaws. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be the act of the Board of Directors, except where any law, regulation, or policy of any governmental agency requires a larger minimum vote in favor of any resolution.

**Section 4.18 Conflicts of Interest and Other Policies**

Members of the Board of Directors shall comply with the District’s Conflict of Interest Code, as it may be amended or supplemented from time to time, applicable provisions of the Political Reform Act, Government Code Section 81000, et seq., Government Code Section 1090, et seq. and other policies adopted by the Board, including but not limited to its confidentiality policies. As required by the forgoing laws, Board members shall file an FPPC Form 700 with the Corporation within 30 days of taking office, annually, and within 30 days of leaving office.

**Section 5.01 Votes Required to Elect Director**

Except as provided in Section 4.01 with respect to *ex officio* Directors, a candidate must receive the vote of a majority of the Directors present to be elected as a Director.

**Section 5.02 Term of Office of Directors**

Directors shall serve a term of four (4) years. Each Director may serve a maximum of two (2) consecutive terms. Former directors will be eligible to serve again after one (1) year of non-service. However, *ex officio* Board members shall serve for a term equal to their term on the District Board, and upon their resignation or removal from the District Board for any reason whatsoever, their terms of office as Directors of this Corporation shall cease and terminate, and their successors on the District Board shall be *ex officio* Directors of this Corporation in their place and stead. Each Director other than *ex officio* Directors, including a Director elected to fill a vacancy, shall hold office until the expiration of the term for which elected, and until a successor has been appointed. The successor Director shall serve the unexpired term of the predecessor Director. If the unexpired term is two (2) years or less, then the successor Director shall serve a term of four (4) years plus the unexpired term. If the unexpired term is more than two (2) years, then the successor Director shall serve the unexpired term and face re-election to serve a new four (4)-year term.

**Section 5.03 Vacancies**

- a. Events Causing Vacancies. A Board member, including but not limited to an *ex officio* Director as a consequence of being a District Board member, shall be deemed to have vacated his seat on the occurrence of any of the following:
  - (1) The death or resignation of the Director.
  - (2) The declaration or resolution of the Board of the vacancy of the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony or has been found by a final order or judgment of any court to have breached a duty under Sections 5230, et seq., of the California Nonprofit Public Benefit Corporation Law.
  - (3) Except as provided in Section 4.01 with respect to *ex officio* Directors, any Director may be removed, either with or without cause, by majority vote of the Directors then in office, at any regular or special meeting of the Board of Directors.

- (4) Except as provided in Section 4.01 with respect to *ex officio* Directors, the absence of a Director from three consecutive meetings of the Board of Directors, and the determination of a majority of the remaining members of the Board of Directors that such absence was not excused.
  - (5) An increase in the authorized number of Directors.
  - (6) The failure of the Directors, at any meeting of the Directors at which any Director or Directors are to be elected, to fill a vacancy scheduled to be filled by election at such meeting.
- b. Resignations. Any Director may resign, which resignation shall be effective upon giving written notice to the Chair, the Chief Executive Officer, the Secretary, or the Board of Directors, unless the notice specifies a later time for the resignation to be effective. If the resignation of a Director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective.
- c. Vacancies of Directors. An Ad Hoc nominating committee will be formed for the purpose of recommending candidates to fill vacancies of Directors. This committee will be appointed in adherence with Section 7.06 and will include no less than two (2) *ex officio* Directors from the District Board. The Directors may elect a Director or Directors at any time to fill any vacancy or vacancies in the Board of Directors. Directors elected to fill a vacancy or vacancies in the Board of Directors of *ex officio* Directors by virtue of being a District Board member need to be the Director elected to the District Board to fill the vacancy on the District Board.
- d. No Vacancy on Reduction of Number of Directors. No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires unless such an intent is shown in the records of the meeting and a majority of the directors approve the reduction in number of directors.

\* \* \*

## Exhibit B

### **Excerpts of the Amendments to the Amended and Restated Bylaws of the Corporation**

#### **Section 2.01 Goals and Purposes**

The Corporation ~~leases-manages~~ the San Gorgonio Memorial Hospital ~~from-for~~ the San Gorgonio Memorial Healthcare District, a local healthcare district under California Health & Safety Code Section 32000. Under ~~the lease-a management services agreement~~ between the District and the Corporation, the Corporation is charged with providing management and pharmacy services to operating the Hospital for the benefit of the communities served by the District. The goals and purposes of this Corporation are to:

- a. operate and maintain the Hospital and provide hospital services for the benefit of the communities served by the San Gorgonio Memorial Healthcare District.
- b. maintain a hospital for the care of persons suffering from illnesses or disabilities which require that the patients receive hospital care.
- c. carry on any activities related to healthcare services which, in the opinion of the Board of Directors, may be justified by the facilities, personnel, funds or other assets that are or can be made available.
- d. participate, so far as circumstances may warrant, in any activity designed and carried on to promote the general health of the community.
- e. provide health education to the Hospital's patients and members of the community regarding wellness and prevention.
- f. attract and retain a diverse staff of qualified well trained and competent healthcare practitioners and support personnel who will provide care in a competent manner.

#### **Section 4.01 Number**

This Corporation shall have ~~thirteen-nine (913)~~ regular Directors, who shall be known collectively as the Board of Directors. Members of the Board of Directors shall be elected, as set forth in Article 5, provided that each individual who takes office as a Director of the District shall be an *ex officio* Director of the Corporation, with full voting rights and shall count for purposes of establishing a quorum. All of the Directors, including *ex officio* Directors, shall be subject to the same terms and provisions of these Bylaws and applicable law except as expressly provided to the contrary by these Bylaws. Subject to the discretion of the Board, two members of the Board of Directors may be members of the Medical Staff of San Gorgonio Memorial Hospital.

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Director, the Chief of Staff shall have no voting rights and shall not count for purposes of establishing a quorum. The Chief of Staff shall abide by all policies of the Corporation applicable to Directors with respect to conflicts of interests and maintaining the confidentiality of trade secret, competitively sensitive information and closed session information.