

**SECOND AMENDMENT TO THE ADMINISTRATIVE AND PROFESSIONAL SERVICES AGREEMENT
ANESTHESIA SERVICES
BETWEEN THE COUNTY OF SANTA CLARA AND
CEP AMERICA-ANESTHESIA, PC**

The Administrative and Professional Services Agreement for Anesthesia Services, effective September 1, 2020, by and between the County of Santa Clara, a political subdivision of the State of California, dba Santa Clara Valley Health and Hospital System (“County”) which now owns and operates O’Connor Hospital (“Hospital”), and **CEP America-Anesthesia, PC** (“Contractor”) for **Anesthesia Services** (“Agreement”), is hereby amended as set forth below effective September 1, 2022 (“SECOND Amendment”).

Background

The Administrative and Professional Services Agreement expires on August 31, 2022. The purpose of this SECOND Amendment is for the Parties to extend the term of the agreement, increase the maximum financial obligation (MFO) by \$10,176,816 for the one-year term, and remove, revise, and add standard provisions.

Agreement

1. RECITALS: Paragraph three (3) is amended as follows:

The Parties agree to comply with the General Terms and Conditions contained in Sections 1 – 24 of this Agreement and provisions contained in Exhibits A and A-1: Contracted Services, Exhibit B: Insurance Requirements, Exhibit C: County Standard Terms and Conditions, Exhibit D: Business Associate Agreement, Exhibit E: County of Santa Clara Health System Security and Confidentiality Agreement, Exhibit F: Payor Identification, Exhibit G: Anesthesia Coverage Schedule, Exhibit H: Report Showing Practice’s Actual Collections and Fee Adjustments, and Exhibit I: Contractor Certification of Compliance with COVID-19 Vaccine Requirements, which are attached hereto and incorporated herein by this reference and made a part of this Agreement.

2. Section 2.1 (Compensation) is hereby deleted in its entirety and replaced with the following:
In consideration of the contracted services provided to County by Contractor, the County shall pay Physician for all undisputed charges in accordance with the compensation schedule described in Exhibits A and A-1. The maximum compensation paid to Contractor pursuant to this Agreement shall not exceed **\$28,946,812** inclusive of expenses as described below. The County will not pay any cost or charge that is not delineated in this Agreement.

3. Section 2.2 (Prompt Payment Discount) is hereby deleted in its entirety and replaced with the following:
Section 2.2 (Prompt Payment Timing) The County’s standard payment term shall be Net Thirty (30), unless otherwise agreed to by the parties. Payment shall be due Net Thirty (30) days from the dated of receipts and approval of correct and proper invoices. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic funds transfer.

4. Section 10.1 (Term) of the Agreement is hereby amended to extend the term of the Agreement through August 31, 2023 subject to termination in accordance with Section 10.2 (Termination of Agreement). Notwithstanding the expiration of the stated term of this Agreement, the County and Contractor may, with mutual written agreement, extend this Agreement beyond the above expiration date for up to six (6) months during the pendency of negotiation of a new contract with Contractor. Should an extension occur the maximum financial obligation (MFO) will be amended as needed.

5. Section 24.11.1 (COVID-19 Vaccine Requirements) is hereby added to the agreement as follows:

Approved: 08/16/2022

Section 24.11.1 (COVID-19 Vaccine Requirements) Contractor shall comply with all County requirements relating to COVID-19 for persons who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations> and incorporated herein by this reference. **If applicable, Contractor shall complete the Contractor Certification of Compliance with COVID-19 Vaccine Requirements (“Certification”), attached hereto as Exhibit G.** Contractor shall comply with the requirements of this Section for the entire term of this Agreement.

6. Attachment to Exhibit A (Medical Director Time Sheet Form Anesthesia Services) is hereby deleted in its entirety and replaced with the Attachment to **Exhibit A** (Medical Director Time Sheet Form Anesthesia Services) hereto attached.
7. Exhibit H (Report Showing Practice’s Actual Collections and Fee Adjustments for the Prior Month CEP America-Anesthesia–Vitiuity) is hereby deleted in its entirety and replaced with the Attachment to **Exhibit H** (Report Showing Practice’s Actual Collections and Fee Adjustments for the Prior Month CEP America-Anesthesia–Vitiuity) hereto attached.
8. Exhibit A-1 (Contracted Services Anesthesia Professional Services) is hereby amended as follows:

Revenue Collection Guarantee is amended as follows:

Revenue Collection Guarantee: The compensation for this contract is a revenue collection guarantee based upon: coverage provided, and locums cost (if applicable). For the baseline 16.2 FTE coverage outlined in Exhibit A-1, section 1 (Professional Services) the annual revenue guarantee is \$10,176,816 (Annual Revenue Guarantee) or \$848,068 monthly (Monthly Guarantee). An additional \$100,000 may be added to the total revenue collection guarantee based on quality performance under the contract, as specified below.

Revenue Guarantee Adjustments for Maximum Coverage Utilization and Expanded Coverage:

The Revenue Guarantee will adjust for Maximum Coverage Utilization in the following manner: There will be no adjustment for the utilization of 8 concurrent rooms or the maximum agreed to coverage based upon the terms in this agreement (Maximum Coverage) up to 8 weekdays in a given month. For every day the County schedules Maximum Coverage more than 8 days in a month, County will pay \$3,100 for each occurrence Maximum coverage is scheduled. By way of example only: If the County schedules 8 rooms 10 times in a month, the Monthly Guarantee for that month will increase by $2 \times \$3,100 = \$6,200$. At any time, the County may choose to eliminate the per diem utilization fee for Maximum Coverage utilization for an additional annual flat fee of \$315,000 added to the annual revenue guarantee in order to allow scheduling of eight (8) concurrent rooms or Maximum Coverage during non-holiday weekdays without per diem fees. This would need to be approved in writing by Hospital Executive.

Expanded Coverage: Additional coverage venues can be added in the following manner: For an additional \$315,000 fee added to the annual revenue guarantee, group will provide scheduling access to an additional room coverage. A per diem fee of \$3,100 per utilization is incurred for any scheduling for Maximum Coverage over 8 times in a month. The venue can convert from a per diem pricing structure to a flat fee which would allow scheduling of Maximum Coverage for an additional \$315,000 annually added to the annual revenue guarantee.

The County’s maximum financial payment to group will never exceed \$10,176.816 annually.

The County shall pay the difference between the groups’ monthly actual revenue collections (“Actual Collections,” defined further below) and the monthly guarantee of \$848,068 plus any fee adjustments (“Monthly Guarantee”) to the extent the monthly Actual Collections is less than the Monthly Guarantee.

The Contractor will submit the Exhibit H Reporting Form within 14 days of the end of the prior month,

documenting its Actual Collections posted for the prior month and the request for payment, as the difference between the Monthly Guarantee and the Actual Collections, to the extent that the Actual Collections is less than the Monthly Guarantee. The County reserves the right to make changes to the required documentation and process for the Revenue Collection Guarantee.

7. Except as set forth herein, all other terms and conditions of the Agreement as amended by this SECOND Amendment shall remain in full force and effect. In the event of a conflict between the original Agreement and this SECOND Amendment, the terms of this SECOND Amendment shall control.

8. The Agreement as amended by this SECOND Amendment constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior oral and written agreements, and representations and understandings between the parties concerning such subject matter.

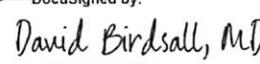
9. This SECOND Amendment may be executed by the parties in any number of separate counter parts, each of which shall be deemed an original and all of which, taken together shall be deemed to constitute one and the same instrument.

INTENDING TO BE BOUND HEREBY, the parties have caused their authorized representatives to execute this SECOND Amendment as set forth below:

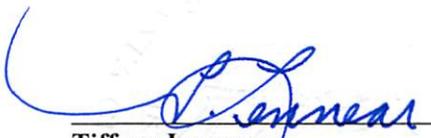
COUNTY OF SANTA CLARA

CONTRACTOR

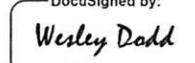

AUG 16 2022
Date
Mike Wasserman
President
Board of Supervisors

DocuSigned by:

8/4/2022
Date
D4DBE4E80A2F488
David Birdsall, M.D.
Chief Operations Officer
CEP America-Anesthesia, PC

Signed and certified that a copy of this Document
Has been delivered by electronic or other means
To the President, Board of Supervisors
ATTEST:


AUG 16 2022
Date
Tiffany Lennear
Clerk of the Board of Supervisors

Approved as to form and legality:

DocuSigned by:

8/4/2022
Date
9BA7F1608BBD485...
Wesley Dodd
Deputy County Counsel

(Attachment to Exhibit A)

**MEDICAL DIRECTOR TIME SHEET FORM
ANESTHESIA SERVICES**

Administrative Services

The following services were provided by _____ M.D. ("Physician") on behalf of **CEP America-Anesthesia, PC**, during the month of _____ 20____ (date and year). *Use as many sheets as necessary.*

	Services Provided (please list specific activity performed)	Date	Hours
1.	Medical Staff CME Activities	_____	_____
2.	Hospital Staff Education & Training	_____	_____
3.	Clinical Supervision	_____	_____
4.	Quality Improvement Activities (committees, case review, etc.)	_____	_____
5.	Administration Activities	_____	_____
6.	Community Education	_____	_____
7.	Medical Management Activities	_____	_____

8. **Compliance Activities**

9.	Other		

I certify to the best of my knowledge that the activities described above are directly related to the administrative services agreement that I have with the hospital and that I have not billed the Medicare program separately for any of the duties and responsibilities described above. Email completed form to: OCHPhysicianInv@hhs.sccgov.org.

Please enter **Medical Director Timesheet** in the email subject line.

CEP America-Anesthesia, PC
 2100 Powell Street, Suite 900
 Emeryville, California 94608

DO NOT PAY -For information only

Compensation: Included in overall revenue guarantee
 Effective 09/01/2022 through 08/31/2023

By: _____ Total Hours _____
(Physician Signature)

Approved by: _____ Date: _____
 Hospital Representative

Approved Hospital Executive: _____

EXHIBIT H

**REPORT SHOWING PRACTICE'S ACTUAL COLLECTIONS
AND FEE ADJUSTMENTS FOR THE PRIOR MONTH
CEP America-Anesthesia – (Vituity)**

O'Connor Hospital Minimum Collection Guarantee Statement

Coverage Shifts for the Month of _____ 20____.

Date of Account Summary and Invoice _____

<u>Month and Date</u>	<u>Billings for Month</u>	<u>Actual Collections</u>
Month of: _____ Dates: _____	<u>Total Amount:</u> \$ _____	<u>Total Amount:</u> \$ _____
<u>Sub-total</u>	\$ _____	\$ _____

Total Collection amount from above dates: \$ _____

The difference between Guaranteed Minimum Collection and Actual Collection (Monthly maximum of \$848,068).

\$848,068 Minus Actual Collections \$ _____ Equals Guarantee \$ _____

Fee Adjustments to Monthly Guarantee:

1) Maximal Coverage Utilization Fee Adjustment:

Dates of Maximal Coverage Scheduled during invoice

Number of Episodes Maximal Coverage Utilized in this period: _____

(Number of Episodes of Maximal Coverage for Month – 8) x \$3,100.00 = \$ _____ (Enter 0 if <0)

Date of Conversion from Per Diem to Unlimited Scheduling: (if applicable)

Flat Fee for Maximal Scheduling Capability (\$25,000.00/month per venue)

2) Locums Differential Fee: _____

(Contractor will submit separate invoice monthly with details)

3) Performance Guarantee: \$ _____

(Contractor will submit separate invoice quarterly with details)

Subtotals: \$ _____

Monthly Guarantee: \$ _____

Utilization Adjustment (per Diem): \$ _____

Utilization Adjustment (Flat Fee): \$ _____

Locums Differential: \$ _____

Performance Metrics \$ _____

Total: \$ _____

Total Amount due to CEP America- Anesthesia, PC \$ _____

Supporting documents attached:

AR Aging

Total AR greater than 90 days

Collection Rate %

Claims Denial rate

Bad Debt % to Net Revenue

I certify to the best of my knowledge that the information on this report is accurate and complete.

Email completed report to: OCHPhysicianInv@hhs.sccgov.org

CEP America-Anesthesia, PC (Vituity)
2100 Powell Street, Suite 400
Emeryville, CA 94608

Compensation: Effective 09/01/2022 -08/31/2023

CEP Authorized Signature: _____ Date: _____

Title: _____

Approved by:

Hospital Representative: _____ Date: _____

EXHIBIT I

**CONTRACTOR CERTIFICATION OF COMPLIANCE WITH
COVID-19 VACCINE REQUIREMENTS**

(Attached form on next page)

**CONTRACTOR CERTIFICATION OF COMPLIANCE WITH
COVID-19 VACCINE REQUIREMENTS
(Revised January 4, 2022)**

Contractor Information:

Contractor name: CEP America-Anesthesia, PC	Name of Contractor representative: David Birdsall, MD
Contractor phone number: 510-851-7552	Contractor email address: David.Birdsall@vituity.com

Contractor Certification. On behalf of Contractor, I hereby certify that:

1. Contractor has reviewed and is in compliance with all current County requirements regarding COVID-19 vaccination applicable to contractor’s employees working at County facilities, including but not limited to the requirements in the County’s memorandum regarding COVID-19 Vaccine Requirement for County Personnel (“County Vaccine Policy”), the County’s memorandum regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, all current State and County Health Officer orders, and any other County requirements. These memoranda and current County policies are accessible at <<https://procurement.sccgov.org/doing-business-county/contractor-vaccinations>>. Contractor has also reviewed and is in compliance with the State of California’s July 26, 2021 Public Health Order and December 22, 2021 Public Health Orders. Contractor understands that it is responsible for reviewing and maintaining compliance with all subsequent revisions or amendments to State and County orders and requirements regarding COVID-19.
2. As of the date signed below:
 - a. Contractor understands that it must confirm, and has confirmed, that all of contractor’s workers (including any subcontractor workers) who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County¹ are:
 - i. Fully vaccinated against COVID-19 and, as of January 24, 2022, up-to-date on any boosters for which they are eligible as defined and required in the County Vaccine Policy; **or**

¹ As established in the County’s Memorandum Regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, contractors performing work at closed construction sites are not required to comply with the County’s vaccination requirements, but must comply with all applicable federal, state, and local public health laws, including but not limited to vaccination, testing, and masking requirements.

- ii. Have a legally sufficient and approved medical, disability, or religious exemption from vaccination that has been granted by contractor.
 - b. Contractor has verified and will continue to verify the vaccination status of all staff working on site at any County facility, and has obtained proof of vaccination from its staff in a form consistent with the California Department of Public Health’s Vaccine Records Guidelines and Standards.
3. If contractor seeks to send any workers who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible, to any County facility because the contractor has granted them an exemption, contractor shall notify the County in writing by providing a list of any such workers to the COVID-19 Designee for the department that manages the facility where the contractor personnel will be working at least 96 hours in advance of any such worker arriving onsite so that the department has sufficient time to determine whether it will approve the contractor’s requests that its personnel work onsite and, if approved, can ensure that the contractor has complied with all applicable COVID-19 safety requirements for unvaccinated individuals, including, where applicable, regular testing and the use of a fit-tested N95 mask.² Notice must be separately provided to each department that manages a facility where contractor seeks to assign personnel to work onsite. Regardless of exemption status, personnel who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible may not work in higher-risk settings at County facilities.³
4. If any of contractor’s workers are noncompliant with vaccination or testing requirements, contractor will notify the County Department for which they are providing services immediately and will not permit those workers to go onsite at a County facility without express written permission from the County.

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² If contractor sends workers who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible, it is contractor’s obligation to ensure that it has any necessary authorization under the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 *et. seq.*, and under any other laws to share this information with the County.

³ “Higher-Risk Settings” are those identified in the Order of the Health Officer of the County of Santa Clara Requiring Up-to-Date COVID-19 Vaccination of Personnel in Higher-Risk Settings, *available at*: <https://covid19.sccgov.org/december-28-2021-booster-health-order>. There are certain high-risk roles and high-risk areas that are not within higher-risk settings. Regardless of exemption status, effective no later than February 1, 2022, County personnel are not permitted to work in these high-risk roles and high-risk areas if they are not fully vaccinated and, as of January 24, 2022, up-to-date.

5. Contractor will comply with all reasonable requests by the County for documentation demonstrating the contractor's compliance with this Certification.

I verify the truth and accuracy of the statements in this Certification under penalty of perjury under the laws of the State of California.

David Birdsall, MD

Chief Operations Officer

Name of authorized representative of
Contractor

Title

DocuSigned by:
David Birdsall, MD

8/4/2022

Signature

Date