

**FIFTH AMENDMENT TO AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND  
GALEN INPATIENT PHYSICIANS, INC. d/b/a Vituity FOR HOSPITALIST SERVICES**

THIS FIFTH AMENDMENT TO THE AGREEMENT, entered into this first (1<sup>st</sup>) day of March , 2023, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and GALEN INPATIENT PHYSICIANS, INC. d/b/a/ Vituity, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the parties entered into an agreement for hospitalist services on February 25, 2020, for the term of March 1, 2020 through February 28, 2023, in an amount not to exceed \$ 9,600,000 (the "Agreement"); and

WHEREAS, the parties amended the Agreement on August 3, 2021, to add a 0.15 FTE Unit 1A Medical Director position; and

WHEREAS, the parties amended the Agreement on August 13, 2021 to add certain additional services in support of Unit 1A for a 10-week period and increase the not to exceed amount of the Agreement by \$25,000; and

WHEREAS, the parties amended the Agreement to continue additional services in support of Unit 1A until January 31, 2022; and

WHEREAS, the parties amended the Agreement to continue additional services in support of Unit 1A until February 28, 2023 by replacing Exhibit A with Exhibit A1, Exhibit B with Exhibit B2, and Exhibit C with Exhibit C1, add Exhibit D and add \$ 1,575,000 to the not to exceed amount of the Agreement, increasing the total not to exceed amount to \$ 11,200,000; and

WHEREAS, the parties are presently in negotiations to enter into a new agreement for hospitalist services and desire to extend the term of the Agreement as amended for three (3) months and seek additional authorization to further increase the not to exceed amount of the Agreement by \$ 933,333.33 to an amount not to exceed \$12,133,333.33, reflecting the extended term

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

1. Section 3, subsection 3.1 ("Term") of the Agreement is amended to read as follows:

Subject to compliance with all terms and conditions, the term of this Agreement shall be from March 1, 2020 through May 31, 2023.

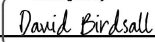
2. Exhibit B2, Section V. of the Agreement is amended to read as follows:

The amount that County shall be obligated to pay for all services rendered under this Agreement shall not exceed TWELVE MILLION ONE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE DOLLARS AND THIRTY THREE CENTS (\$12,133,333.33) for the Agreement term of March 1, 2020 through May 31, 2023.T.

- 3. That certain letter dated January 13, 2023 sent by the County of San Mateo, Office of the County Attorney regarding "SMMC Overpayment for Hospitalist Malpractice Insurance Reimbursement" shall be attached to the Agreement as Exhibit H and shall govern the overpayment of malpractice insurance reimbursement by County to Contractor. Contractor shall invoice County the regular monthly base payment amount of \$ 307,721.39. It is further agreed that Contractor shall submit a final malpractice insurance reimbursement invoice to County for incurred malpractice insurance expense upon the expiration of this Agreement not to exceed \$ 35,000.00 on an annual basis and prorated for the months of coverage provided until the expiration of the Agreement.
- 4. **All other terms and conditions of the agreement, as previously amended, between the County and Contractor shall remain in full force and effect.**

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Galen Inpatient Physicians, Inc. d/b/a Vituity

<small>DocuSigned by:</small>  <small>1/26/2023 10:02:43 AM</small>	1/26/2023	David Birdsall, M.D., COO
Contractor Signature	Date	Contractor Name (please print)



COUNTY OF SAN MATEO

By:  
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:  
Clerk of Said Board

EXHIBIT H



**COUNTY OF SAN MATEO**  
**OFFICE OF THE COUNTY ATTORNEY**

HALL OF JUSTICE AND RECORDS, 400 COUNTY CENTER, 6<sup>TH</sup> FLOOR • REDWOOD CITY, CA 94063-1662  
TELEPHONE: (650) 363-4250 • FACSIMILE: (650) 363-4034  
www.smcgov.org/countyatorney

COUNTY ATTORNEY  
JOHN D. NIBBELIN

January 13, 2023

*Please respond to: (650) 363-4461*

Via U.S. Mail and Facsimile

David Birdsall, MD  
Chief Operations Officer  
Galen Inpatient Physicians, Inc. d/b/a Vituity  
2100 Powell Street, Ste. 400  
Emeryville, CA 94608-1903

*With Copy to:*

Galen Inpatient Physicians, Inc. d/b/a Vituity  
2100 Powell Street, Ste. 400  
Emeryville, CA 94608  
Attn: Legal and Compliance Department  
Facsimile: 855-243-3643

*Re: SMMC Overpayment for Hospitalist Malpractice Insurance Reimbursement*

Dear Dr. Birdsall:

Review of San Mateo Medical Center's payments to Vituity over the past twelve months for hospitalist services disclosed that Vituity was overpaid for medical malpractice reimbursements due under the current contract in the amount of \$9,285.54 to date. The error appears to have occurred when SMMC made regular payments in the amount of \$310,638.00 to Vituity / Galen during the months of February through November in 2022. In each month a payment in the amount of \$2,916.61 was paid in addition to the regular base payment due under the current amended agreement of \$307,721.39. The total of these overpayments are \$29,166.10. The overpayments were paid on top of paying Vituity's separate invoice for medical malpractice expenses in the amount of \$15,119.44, which covered the months of March through August of 2022. As a result, SMMC reimbursed Vituity \$44,285.54 for malpractice expenses, which is \$9,285.54 above the \$35,000.00 annual malpractice expense cap in the parties' current coverage agreement. For your convenience, here is a graphical illustration of the accounting:

David Birdsall, MD  
 January 13, 2023  
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	Actual	Contract				
	Base Payment	Base Payment	Overpayment		Malpractice	High Census
February	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61	9/1/21-2/28/22	\$ 12,301.80	\$ 3,480.00
March	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61			
April	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61			
May	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61			
June	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61			
July	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61			
August	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61			
September	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61			
October	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61			
November	\$ 310,638.00	\$ 307,721.39	\$ 2,916.61	3/1/22-8/31/22	\$ 15,119.44	\$13,920.00
December			\$ -			
Total Base pmts	\$ 3,106,380.00	\$ 3,077,213.90	\$ 29,166.10	2022 mal paid	\$ 15,119.44	\$17,400.00
				Base overpayment	\$ 29,166.10	
				Total malpractice payments	\$ 44,285.54	
<b>Base contract w/o malpractice</b>				Cap	\$ 35,000.00	
Physicians	\$ 2,892,070.50			overpayment	\$ 9,285.54	
Med Dir	\$ 160,143.15					
MSO	\$ 610,443.00					
Ingenious Med	\$ 30,000.00					
Annual	\$ 3,692,656.65					
	12					
Monthly	\$ 307,721.39					

Practice Expenses	Annual Cost per FTE	Number of FTEs
Physicians	\$ 289,207	10.0
Administrative services (Medical Directorship) (0.45 FTE)		

Please be advised that San Mateo Medical Center intends to offset \$9,285.54 against the sum payable for the remaining invoices of this contract term (December 2022 through February 2023). To avoid a similar mishap going forward, please discontinue including any malpractice expense "pass through" in regular monthly invoices to San Mateo Medical Center. Please invoice only the base rate of \$307,721.39 on a monthly basis. Please also separately invoice Vituity's actual annual malpractice reimbursement expenses, and should that amount fall below the reimbursement cap of \$35,000.00, SMMC will offset the remainder on the last invoice.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your cooperation and understanding.

Very truly yours,

JOHN D. NIBBELIN, COUNTY ATTORNEY

By:   
 James R. Mehlhaff, Deputy County Attorney

JDN:JRM/ag