

# April 2 2020 Special Meeting

## April 2 2020 Special Meeting - April 2 2020 Special Meeting

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***NOTICE***  
**NORTHERN INYO HEALTHCARE DISTRICT  
BOARD OF DIRECTORS SPECIAL MEETING**

**April 2, 2020 at 5:30 p.m.  
2957 Birch Street, Bishop, CA**

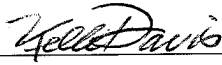
***Northern Inyo Healthcare District invites you to join this WebEx meeting:***

LINK TO JOIN THE WEBEX MEETING: <https://nihd-it.my.webex.com/nihd-it.my/j.php?MTID=m7d1a7a5cb54c45bfe6c3d458087ab3be>  
Meeting password: N8TqRDEZ4y3

TO DIAL IN BY PHONE: +1-510-338-9438 USA Toll  
Meeting Number (access code): 290 251 003

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1. Call to Order (at 5:30 pm).
2. ***Public Comment:*** At this time, members of the audience may speak only on items listed on the Notice for this meeting, and speakers will be limited to a maximum of three minutes each. The Board is prohibited from generally discussing or taking action on items not included on the agenda.
3. Request to Centers for Medicare and Medicaid Services (CMS) for advanced payments to providers (*action item*).
4. Appointment of General Counsel and approval of contract for General Counsel services (*action item*).
5. Adjournment to Closed Session for:
  - A. Discussion of a real estate negotiation regarding possible purchase, sale, or lease of property at 153 Pioneer Lane, Bishop, California (*pursuant to Government Code Section 54956.8*).
6. Return to Open Session and report of any action taken in Closed Session.
7. NIHD Rural Health Clinic rebuild update.
8. Adjournment.

  
\_\_\_\_\_  
Kelli Davis, Interim Chief Executive Officer

*In compliance with the Americans with Disabilities Act, if you require special accommodations to participate in a District Board meeting, please contact administration at (760) 873-2838 at least 48 hours prior to the meeting.*



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**Northern Inyo Healthcare District**

150 Pioneer Lane  
Bishop, CA 93514  
(760) 873-5811  
[www.nih.org](http://www.nih.org)

**March 31, 2020**

**Memo To:** Board of Directors of Northern Inyo Healthcare District  
**From:** John Tremble, Chief Financial Officer  
**Subject:** COVID-19 Cash Advance Opportunity from Medicare

In response to the challenges of the COVID-19 outbreak, CMS has been granted authority to make advance payments to acute care hospitals, children’s hospitals and critical access hospitals.

Critical access hospitals can request a cash advance of 125 percent of the payment amounts it has received in the last six months as long as they are not in bankruptcy, under medical review, under a program integrity investigation or delinquent in submitting Medicare overpayments. The cash advance is payable to CMS within one year of receipt of the payment and comes with no interest costs.

Northern Inyo Healthcare District averages between \$4.7 million and \$6.3 million each six months of net payment for inpatient claims.

Northern Inyo Healthcare District averages between \$3.9 million and \$4.7 million each six months of net payment for outpatient Critical Access Hospital services.

Northern Inyo Healthcare District averages between \$11,220 and \$14,570 each six months for net payments on fee based laboratory services.

Northern Inyo Healthcare District averages between \$389,200 and \$461,400 each six months for net payments on hospital based physician services.

Northern Inyo Healthcare District averages between \$267,650 and \$1,259,300 each six months for net payments on swing bed days.

Northern Inyo Rural Health Clinic averages between 3,035 visits and 3,800 visits each six months and \$697,400 and \$1,172,000 each six months for net rural health clinic payments.

If the Rural Health Clinic is allowed to request an advance, the total maximum Northern Healthcare District could request is estimated to be:  $\$13,907,000 * 1.25 = \$17,383,000$ . 74 days cash on hand.

The management of Northern Inyo Healthcare District is requesting that the Board of Directors authorizes it to request the maximum cash advance from CMS/Medicare. The Board should be aware that receipt of this advance will substantially change the District’s year end balance sheet in terms of the value of current assets and current liabilities. The advance should allow the District to have 75 days cash on hand as of fiscal year end.

If the District cannot pay back the “advance” within one year, the rate of interest that will be charged is 10.25%.

**AGREEMENT BETWEEN NORTHERN INYO HEALTHCARE DISTRICT  
AND JONES & MAYER  
FOR THE PROVISION OF LEGAL SERVICES**

**INTRODUCTION**

WHEREAS, Northern Inyo Healthcare District (hereinafter referred to as "NIHD" or "District") may have the need for the legal services of the Jones & Mayer law firm hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

The Contractor shall serve as General Counsel for NIHD, and furnish to NIHD, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the District to the Contractor to perform under this Agreement will be made by the Office of County Counsel. Requests to the Contractor for work or services to be performed under this Agreement will be based upon NIHD's need for such services. The District makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the District under this Agreement. NIHD by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if District should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at the District's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, county, and District laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

**2. TERM.**

The term of this Agreement shall be from April 1 2020 to December 31, 2021, unless sooner terminated as provided below.

**3. CONSIDERATION.**

A. Compensation. NIHD shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment **B**) for the services and work described in Attachment **A** which are performed by Contractor at the County's request.

B. Travel and per diem. District shall reimburse Contractor for travel expenses and per diem which Contractor incurs in providing services and work requested by District under this Agreement. Contractor shall request approval by the District prior to incurring any travel or per diem expenses. Requests by Contractor for approval to incur travel and per diem expenses shall be submitted to the Administration Office of NIHD. Travel and per diem expenses will be reimbursed in accordance with the rates set forth in the Schedule of Travel and Per Diem Payment (Attachment **C**). District reserves the right to deny reimbursement to Contractor for travel or per diem expenses which are either in excess of the amounts that may be paid to under the rates set forth in Attachment **C**, or which are incurred by the Contractor without the prior approval of the District.

C. Incidental Expenses. District shall reimburse Contractor in accordance with the Schedule of Fees (Attachment B) for those Incidental Expenses which are specifically identified in the Schedule of Fees and which are necessarily incurred by the Contractor in providing the services and work requested by District under this Agreement. Reimbursement by NIHD for such Incidental Expenses will be limited to Contractor's actual cost without regard to any administrative or overhead expenses incurred by Contractor in obtaining or utilizing such incidental services or supplies. Reimbursement for actual costs will not exceed the amounts set forth in the Schedule of Fees.

D. No additional consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from District, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

E. Billing and payment. The billing and payment arrangement is set forth in Attachment B.

G. Federal and State taxes.

(1) Except as provided in subparagraph (2) below, District will not withhold any federal or state income taxes or social security from any payments made by District to Contractor under the terms and conditions of this Agreement.

(2) District will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety nine dollars (\$1,499.00).

- (3) Except as set forth above, District has no obligation to withhold any taxes or payments from sums paid by District to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. NIHD has no responsibility or liability for payment of Contractor's taxes or assessments.
- (4) The total amounts paid by District to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to the District an Internal Revenue Service (IRS) Form W-9 upon executing this Agreement.

#### **4. WORK SCHEDULE.**

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the District. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with District to ensure that all services and work requested by District under this Agreement will be performed within the time frame set forth by District.

#### **5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.**

A. Any licenses, certificates, or permits required by the federal, state, county, municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the District. Contractor will provide District, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and District as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, District reserves the right to make such determinations for purposes of this Agreement.

B. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.epls.gov>.

#### **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. Except for those incidental expenses specifically identified in the Schedule of Fees (Attachment), District is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining items not specifically set forth in the Schedule of Fees (Attachment B), is the sole responsibility and obligation of Contractor.

**7. COUNTY PROPERTY.**

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by District pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of District. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the District. At the termination of the Agreement, Contractor will convey possession and title to all such properties to District.

**8. WORKERS' COMPENSATION.**

Contractor shall provide Statutory California Worker's Compensation coverage and Employer's Liability coverage for not less than \$1,000,000 per occurrence for all employees engaged in services or operations under this Agreement. The District, its agents, officers and employees shall be named as additional insured or a waiver of subrogation shall be provided.

**9. INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES.**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **\$1,000,000.00** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$500,000.00** per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$ 1,000,000** per accident for bodily injury or disease.  
*(Not required if Contractor provides written verification it has no employees)*

4. Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than **\$1,000,000.00** per occurrence or claim.

If the Contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor.

- B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status.

The District, its officers, officials, employees, and volunteers are to be covered as insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

2. Primary Coverage.

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Notice of Cancellation.

Each insurance policy required above shall state that coverage shall not be canceled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the District.

4. Waiver of Subrogation.

Contractor hereby grants to District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

- D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.



E. Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

F. Verification of Coverage. Contractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

G. Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

H. Special Risks or Circumstances. District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **10. STATUS OF CONTRACTOR.**

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and no agent, officer, or employee of Contractor is to be considered an employee of District. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of District. Except as expressly provided in Attachment **A**, Contractor has no authority or responsibility to exercise any rights or power vested in the District. It is understood by both Contractor and District that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to District only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to District's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of District.

## **11. DEFENSE AND INDEMNIFICATION.**

Contractor shall defend, indemnify, and hold harmless District, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, or employees. Contractor's obligation to defend, indemnify, and hold the District, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Contractor, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the District, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

To the extent permitted by law, District shall defend, indemnify, and hold harmless Contractor, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, or resulting from, the active negligence, or wrongful acts of District, its officers, or employees.

## **12. RECORDS AND AUDIT.**

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of District shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which District determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, District has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

**13. NONDISCRIMINATION.**

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

**14. CANCELLATION.**

This Agreement may be canceled by District without cause, and at will, for any reason by giving to Contractor thirty (30) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to District.

**15. ASSIGNMENT.**

This is an agreement for the services of Contractor. District has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of District. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of District.

**16. DEFAULT.**

If the Contractor abandons the work, or fails to proceed with the work and services requested by District in a timely manner, or fails in any way as required to conduct the work and services as required by District, NIHD may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, District will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

**17. WAIVER OF DEFAULT.**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-three (23) below.

**18. CONFIDENTIALITY.**

Contractor agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written consent of the District. Any disclosure of confidential information by Contractor without the District's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

**19. CONFLICTS.**

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

**20. POST AGREEMENT COVENANT.**

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the District in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the District, or who has been an adverse party in litigation with the District, and concerning such, Contractor by virtue of this Agreement has gained access to the District's confidential, privileged, protected, or proprietary information.

**21. SEVERABILITY.**

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**22. FUNDING LIMITATION.**

The ability of District to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, District has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Contractor of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-four (24) (Amendment).

**23. AMENDMENT.**

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

**24. NOTICE.**

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or District shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

**NORTHERN INYO HEALTHCARE DISTRICT:**  
Administration  
150 Pioneer Lane  
Bishop, CA 93514

**CONTRACTOR:**

NIHD Standard Contract  
(Independent Contractor - Schedule of Fees Including Incidental  
Expenses/Schedule of Per Diem)

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Modified Contract No.

Ryan Jones, Partner  
Jones & Mayer  
6349 Auburn Blvd  
Citrus Heights, CA

**25. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

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**AGREEMENT BETWEEN NORTHERN INYO HEALTHCARE DISTRICT  
AND JONES & MAYER  
FOR THE PROVISION OF LEGAL SERVICES**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS  
2<sup>nd</sup> DAY OF

**NORTHERN INYO HEALTHCARE DISTRICT**

**CONTRACTOR**

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

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ryan Jones, Partner

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
District Counsel

APPROVED AS TO ACCOUNTING FORM:

\_\_\_\_\_  
Chief Financial Officer

APPROVED AS TO PERSONNEL REQUIREMENTS:

\_\_\_\_\_  
Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

\_\_\_\_\_  
Risk Manager

**ATTACHMENT A**  
**AGREEMENT BETWEEN NORTHERN INYO HEALTHCARE DISTRICT**  
**AND JONES & MAYER**  
**FOR THE PROVISION OF LEGAL SERVICES**

**TERM:**

**FROM: April 1, 2020 TO: December 31, 2021**

**SCOPE OF WORK:**

Contractor shall provide General Counsel legal services for the District. That type of work includes, but is not limited to, the items listed in the Scope of Services section of the RFP for General Counsel Legal Services (released February 29, 2020) at pages 4-5.

**ATTACHMENT A-1**

**AGREEMENT BETWEEN NORTHERN INYO HEALTHCARE DISTRICT  
AND JONES & MAYER  
FOR THE PROVISION OF LEGAL SERVICES**

**TERM:**

**FROM: April 1, 2020 TO: December 31, 2021**

**NORTHERN INYO HEALTHCARE DISTRICT  
HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is made by and between the Northern Inyo Healthcare District, referred to herein as Covered Entity (“CE”), and of JONES & MAYER referred to herein as Business Associate (“BA”). This Agreement is effective as of April 1, 2020, (the “Agreement Effective Date”).

***RECITALS***

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require JONES & MAYER to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Agreement.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

**1. Definitions**

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.



- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

## 2. **Obligations of Business Associate**

- a. **Permitted Uses.** BA shall not use Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and Agreement. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information (i) for the proper management and administration of BA, (ii) to carry out the legal responsibilities of BA, or (iii) for Data Aggregation purposes for the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and Agreement. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of

such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by CIMH to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** BA shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than ten (10) calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI.** Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors shall be the responsibility of CE [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- i. **Accounting Rights.** Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, BA and its agents or subcontractors shall make available to

CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individuals' authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528].

- j. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BA shall provide to CE a copy of any Protected Information that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** BA (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- m. **Notification of Breach.** During the term of the Contract, BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- n. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under the Contract or Agreement or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE's obligations under the Contract or Agreement or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

- o. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by CE, BA and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether BA has complied with this Agreement; provided, however, that (i) BA and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, and (ii) CE shall protect the confidentiality of all confidential and proprietary information of BA to which CE has access during the course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems, books, records, agreements, policies and procedures does not relieve BA of its responsibility to comply with this Agreement, nor does CE's (i) failure to detect or (ii) detection, but failure to notify BA or require BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract or Agreement. BA shall notify CE within ten (10) days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Agreement, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed.

### 4. Disclaimer

CE makes no warranty or representation that compliance by BA with this Agreement, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

### 5. Amendment

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract of Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI. The parties

understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Agreement when requested by CE pursuant to this Section or (ii) BA does not enter into an amendment to the Contract or Agreement providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

**6. Assistance in Litigation of Administrative Proceedings**

BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under the Contract or Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA by the BA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is named adverse party.

**7. No Third-Party Beneficiaries**

Nothing express or implied in the Contract or Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**8. Effect on Contract**

Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all other terms of the Contract shall remain in full force and effect.

**9. Interpretation**

The provisions of this Agreement shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Agreement. This Agreement and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

COVERED ENTITY

BUSINESS ASSOCIATE

Northern Inyo Healthcare District  
By: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

RYAN JONES \_\_\_\_\_

Title: \_\_\_\_\_

Title: Partner, Jones & Mayer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B**  
**AGREEMENT BETWEEN NORTHERN INYO HEALTHCARE DISTRICT**  
**AND JONES & MAYER**  
**FOR THE PROVISION OF LEGAL SERVICES**

**TERM:**

**FROM: April 1, 2020 TO: December 31, 2021**

**SCHEDULE OF FEES:**

Monthly retainer: Contractor will provide general legal services for \$7,600 per month. That monthly fee is capped at 40 hours per month. For general legal service above 40 hours per month, District will pay an hourly rate of \$200 for all attorneys. General legal services are those services which involve regular, recurring legal and factual issues. General legal services include: Attendance at District meetings, work with District staff on all agenda items for Board meetings, drafting, review and revision of District agendas, agreements, contracts, instruments, basic ordinances, reports, resolutions, and other documents as requested by District. The parties agree to assess the rate and proposed hours after 6 months and determine whether the rates are appropriate for both sides.

Litigation and special legal services include those matters which present unique legal and/or factual issues and are billed at a rate of \$225 per hour for attorney services and \$125 per hour for paralegal services. As with general legal services, all attorneys in our office would bill at this same hourly rate for litigation and special legal services. Special legal services differ from general legal services in that they are of an irregular non-recurring basis. Examples include all litigation, or a complex employment investigation.

The General Counsel may not unilaterally designate any matter as a special project. For any "special" matter, we will first need approval from the CEO or Board of Directors, and we will provide a proposed budget for said work before it is approved. It is our goal to keep as much work as possible under general legal services. While it may seem contrary for a law firm to want to reduce its billings, we have found that in order to maintain a healthy and long-term relationship with our municipal clients, keeping the billing reasonable is essential. If you ask our current clients, you will find that our billing practices are sensible because of our long-term approach to client relationships. Moreover, we appreciate that the money spent on our firm are precious tax dollars that could be used for other important municipal services. Local governments in California have limited resources and must spend their revenues judiciously.

Rate Guarantee. We propose freezing our rates for a period of two years, with rates to vary thereafter based upon the Consumer Price Index increase for the prior year utilizing the standard as established by the Bureau of Labor Statistics of the U.S. Department of Labor for consumers in the Inyo County area, or another mutually agreed upon index.

Expense Reimbursement/Mileage. For all general legal services, we will bill three hours of travel time each way from to Bishop. We generally do not bill fax, word processing, or small reproduction

matters (under 100 pages). The firm will charge the client for actual necessary costs incurred for all of the following including but not limited to: court filing fees, attorney services (includes service of process fees, arbitrators, and mediators), messenger services, Lexis-Nexis research, overnight or express delivery services, mileage, parking fees, travel expenses, if applicable, including hotel, air travel and car rentals, actual costs for large reproduction projects if performed by an outside service, or \$0.10 per page (b/w) and \$0.20 per page (color) if performed in house, and any other expense not listed above which becomes necessary to the successful resolution of a client matter. In addition to the above, we would charge travel time for litigation and special services.

Method of Payment/Payment terms. A monthly invoice is sent to the client by the 15th of each month. Payment in full is due within 45 days of receipt. Our current practice with our clients is to bill by 1/10th of an hour every month on the first of the month for the prior months' services and costs. Jones & Mayer uses the Timeslips billing system to track attorney fees and expenses. Attorneys are responsible for entering their time directly into the system. Costs are paid by Accounting through the QuickBooks system, then entered separately into Timeslips for billing to the client. The time entries and costs appear on the bill in line item form, enabling the client to easily review and approve individual entries. The invoices will include an itemized statement which indicates work completed and hours of service rendered. Individualized billing entries are made for both retainer and non-retainer services to allow tracking and evaluation of services rendered. We also prepare annual audit responses on behalf of our clients for all pending litigation matters as required by insurance carriers, accounting auditors or joint powers authorities, as applicable.

**ATTACHMENT C**

**AGREEMENT BETWEEN NORTHERN INYO HEALTHCARE DISTRICT  
AND JONES & MAYER  
FOR THE PROVISION OF LEGAL SERVICES**

**TERM:**

**FROM: April 1, 2020 TO: December 31, 2021**

**SCHEDULE OF TRAVEL AND PER DIEM PAYMENT**

Travel shall be at the county's request and will be billed at cost.

Per diem travel from portal to portal will be at the current IRS rate.



## Discussion Points of Rural Health Clinic Land and New Building Proposal

A telephonic meeting occurred on Wednesday, March 11th<sup>nd</sup> between Attorney Shahan Hairapetian and John Tremble (CFO). The five points as outlined below were discussed along with history of where the deal is sitting at this time. Concerns expressed are:

- The “need” the District feels to use this method versus a more traditional debt financing. The answer is timing (sooner than the District expected) and method (perhaps being “off balance sheet”).
- What is the “true” impact of this “deal” on the District’s ability to meet the provisions of existing bonds? (This question about the lease has been submitted to Wipfli to answer)
- If this type of financing is “preferred” by the District; our Attorney finds the lease and option provisions to be “pro” landlord and contains a number of provisions where the land and building could become outside the ability of the District to exercise its option with minor mistakes by the District. (rent being a single day late)
- Is the “intent” of the deal to have a portion of the cost of the project reimbursed through the rental payment stream. If so, the District needs to outline the purchase price at the end of ten years. If the project cost is \$9,000,000; and a 5% interest rate; the District would pay \$8,100,000 to purchase the building seven years later while also paying \$3.96 million rent (interest).
- The current language has FMV (fair market value) in it for the purchase of the project at the end of ten years and this gives the District unreasonable uncertainty.
- The current language requires the District to return the property to “as was” condition before any tenant improvements. This conflicts with discussions about this 30,000 sq. ft. building being \$500, \$600 a square foot. If the project is \$600 a square foot, the District does not have the resources to make the required investment for a \$18,000,000 building.

### Items of Agreement are:

- A \$25,000 walk away fee appears reasonable.
- The District will pull any requested documents on land conditions that it has.
- Granting the landlord the ability to reject an assignment of the lease but not a sublease.

### The District “believes” Mr. Walker will benefit economically by:

Avoiding several hundred thousand dollars in Federal taxes at the end of ten years.

Receive a strong reliable stream of revenue over the ten years.

Be able to depreciate a couple million dollars of building value over the 10 years while having a significant capital gain (non-taxable) at the end of the ten years.

The District also knows Mr. Walker is taking the risk of having a building in Bishop without a renter should the District default on the lease.

**Unexpected Finding:**

- Even though the District would be the sole occupier of the property. Robert Sharp has heard from the County that the property would move onto the Property Tax roles with the transfer: This would cost the District \$48,000 during three year construction and another \$630,000 during the seven year occupancy. This roughly \$680,000 would only be reimbursed at 30% given the current RHC Medicare percentage of patient visits.

At the previous meeting, Sam Walker shared an email between himself and his attorney and five key points where agreement has become stalled from his position. The points and the concerns of the earlier meeting discussed were:

1. The repurchase provision makes the agreement unique and less attractive as an investment. It also leaves the District in control of the property even if it breaches provisions of the leases (non-payment). What type of assurance or deposit could the District provide to improve the position of the lessor?
2. The rental stream of \$4.86 million over ten years, does not appear to be adequate to compensate for a total investment of \$7.8M in building and \$1.2M in land. Should the agreement have a known value for purchase after 10 years? This would provide a known return on investment.
3. There is concern that the deal continues to incur costs for Mr. Walker. There continues to be substantial unknowns which could unravel the deal down the road. (Building costs beyond the District's ability to afford). Mr. Walker at this point would like a walk away reimbursement of \$25,000.
4. It appears to the purchasers believe the District has not provided reasonable amount of materials and information on the land, the cell tower and other questions on the property.
5. The purchaser is very concerned with the request of the District to assign the lease without approval by the landlord. They do not have an issue with sublease, but want approval of assignment for a number of reasons.
6. There were a number of other parts of the deal that were discussed as well. The cost of the project and how the District could/would afford it. What other options have the District considered to finance the building. Potential reduction in the deal to just a land lease. As well as more specifics on potential philanthropy related to the project. Each party was to have discussions with their attorney's to review the above points and discuss next steps.

# OVERVIEW OF RHC OPPORTUNITY ZONE REPLACEMENT CLINIC PROJECT

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As of: March 31, 2020

Prepared by John Tremble, CFO

# Original Assumptions/Proposal

- The project will get done sooner by end of 2022, than if the District used its resources and timelines
- The use of Opportunity Zone funds will not cost more in operations than the District could do on its own
- The Opportunity Zone RHC clinic would be “off the books” and not impact the District’s balance sheet
- The investment in new equipment for the RHC and any add-ons to the building would be within the District’s normal capital funding capacity
- The \$7.8 million will build a 30,000 sq. ft. clinic
- The \$1.2 million received from the land purchase could be reinvested to equal the cost of it being in the lease expense over 10 years
- Parking will be a problem needing separate resolution

# Discoveries

- The use of Opportunity Zone funds will mean that the District will pay real estate taxes which adds (\$680,000) during the 10 year lease with the expense rate up to \$100,800 by year ten.
- The rapid drop in mortgage rates now has widened the difference between the interest rate the developer needs to charge and what the District could borrow at (2% - 3%) if USDA funding is used. This adds (\$556,000) to the lease over 10 years.
- The percentage of the clinic revenue is significantly less than the 45% assumption used that will be cost based reimbursed. Traditional Medicare only accounts for 30% of RHC revenues and would not increase when adding the mix of NIA patients to the RHC

# Additional Discoveries

- The cost of construction could be twice to almost three times more than the \$7.8 million project budget. Costs ranging from \$500 (\$15 million) to \$600 (\$18 million) per gross square foot have been estimated by the construction firm doing the hospital work today. NIHD does not have the working capital or debt capacity to pay the extra millions in building costs under its current debt covenants
- The reductions in staffing projected from consolidating the NIA clinic operations with the RHC operations may not cover the added operating expenses associated with the new RHC building, (utilities, security, cleaning, staff space)
- The impact on the reduced rental income from the PMA building (\$420,000) over the last seven years of the lease was not in the original project impact calculation
- No negative impact of moving tests and images out of the hospital have been assumed, but providers want those services in the RHC

# Still Unknown

- Economic improvement in pediatric net revenues from Medicaid
- Limits on Medicaid rate change allowed
- Land suitability
- Land setback restrictions
- LP Tank relocation costs
- Temporary RHC location/operations costs
- Relocation of Eye Clinic (PMA?)
- Street Closing Costs for NIHD

# Economic Changes

- COVID-19
- Treasury Rate Actions
  - Significant drop in prime rate
  - Significant drop in mortgage rates and USDA rates
- Fixed Rate Changes
  - 10 Year Treasury Rate is  $< 1.4\%$
  - 5 Year CD rates are at  $1.0\%$  or less



# Assessment As of April 2<sup>nd</sup> of Proposal

- The project will get done sooner by end of 2022, than if the District used its resources and timelines
- The use of Opportunity Zone funds **will** cost more in operations than the District could do on its own (\$1,666,000) over ten years
- The Opportunity Zone RHC clinic would be “**on the books**” and **will** impact the District’s balance sheet and debt covenant ratios
- The investment in new equipment for the RHC and any add-ons to the building **will not be** within the District’s normal capital funding capacity as the building is estimated to cost substantially more
- The \$7.8 million **will not** build a 30,000 sq. ft. clinic
- The \$1.2 million received from the land purchase **cannot** be reinvested to equal the cost in the lease expense over 10 years
- Parking will be a problem needing separate resolution

# Overall Challenge

- The Northern Inyo Rural Health Clinic is amongst the most expensive in the nation on a per visit basis at \$435 per visit. Nothing in the building plan reduces that per visit cost substantially and thus will continue to make Northern Inyo's Rural Health Clinic vulnerable to reimbursement changes from Medicare where they would limit the paying of cost per visit