



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.766.5066

Board Order

Agreement No.: A-12472

Upon motion of Supervisor Salinas, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

Authorized the Purchasing Manager for Natavidad Medical Center (NMC) to execute Amendment No. 2 to the Agreement with Mirai Bracco Cain for Marketing & Public Relations Consulting Services at NMC, extending the Agreement to June 30, 2014 and adding \$100,000 for a revised total Agreement amount not to exceed \$200,000 in the aggregate.

PASSED AND ADOPTED on this 11th day of June 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calzagno, Salinas and Parker
NOES: None
ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on June 11, 2013.

Dated: June 21, 2013
File Number: A 13-102

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California
By Dennis Hancock Deputy

1. Contractor will continue to provide NMC with the same scope of services as stated in the original Agreement (No. MYA221).
2. Section 1. "PAYMENTS BY NMC" shall be amended by removing, "The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$100,000." and replacing it with "The total amount payable by County to CONTRACTOR under Agreement No. (MYA221) shall not exceed the total sum of \$200,000 for the full term of the Agreement".
3. Section 2. "TERM OF AGREEMENT" shall be amended by removing, "The term of this Agreement is from January 1, 2012 to December 31, 2012 unless sooner terminated pursuant to this Agreement" and replacing it with "The term of this Agreement is January 1, 2012 to June 30, 2014 unless sooner terminated pursuant to this Agreement".
4. Except as provided herein, all remaining terms, conditions and provisions of the Agreement and Amendment No. 1 are unchanged and unaffected by this Amendment No. 2 and shall continue in full force and effect as set forth in the Agreement.
5. A copy of this Amendment No. 2 and all previous amendments shall be attached to the original Agreement (No. MYA221).
6. The effective date of this Amendment is July 1, 2013.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

AGREEMENT

WHEREAS, the County and Contractor wish to amend the Agreement to increase the amount of the Agreement because of the term extension and the amount payable for services rendered.

WHEREAS, the County and Contractor wish to amend the Agreement to extend the term end date to allow for existing services to continue; and

WHEREAS, the County and Contractor amended the Agreement previously on January 1, 2012 via Amendment No. 1; and

RECITALS

This Amendment No. 2 to Professional Services Agreement ("Agreement"), dated January 1, 2012, is entered into by and between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Marci Bracco Cain (Contractor), with respect to the following:

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN Marci Bracco Cain AND
THE NATIVIDAD MEDICAL CENTER
FOR
Marketing & Public Relations Consulting Services**

IN WITNESS WHEREOF, the parties hereto are in agreement with this Amendment on the basis set forth in this document and have executed this Amendment on the day and year set forth herein.

Contractor

Maria Baccarini, M.D.
Contractor's Business Name*** (see instructions)

Maria Baccarini
Signature of Chair, President, or Vice-President

Maria Baccarini, M.D.
Name and Title

Date: 4.25.13

By: Maria Baccarini
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Maria Baccarini, M.D.
Name and Title

Date: 4.25.13

**Instructions

IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).

IF CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).

IF CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required)

Natividad Medical Center

By: Jim Lopez
Sid Cato, NMC Contracts Manager

Date: 6-12-13

By: [Signature]
Harry Weis, NMC Chief Executive Officer

Date: 4.13.13

APPROVED AS TO LEGAL PROVISIONS

By: A.B.

Anne Brater
Monterey County, Deputy County Counsel

Date: March 6, 2013

APPROVED AS TO FISCAL PROVISIONS

By: [Signature]
Gary Giboney
Monterey County Auditor/Controller's Office

Date: 5-6-13

Signature Page to Follow

1. Contractor will continue to provide NMC with the same scope of services as stated in the original Agreement (No. MYA 221).
2. Section 2, "TERM OF AGREEMENT" shall be amended by removing, "The term of this Agreement is from January 1, 2012 to December 31, 2012 unless sooner terminated pursuant to this Agreement" and replacing it with "The term of this Agreement is from January 1, 2012 to June 30, 2013 unless sooner terminated pursuant to this Agreement."
3. A copy of this Amendment shall be attached to the original Agreement (No. MYA 221).
4. The effective date of this Amendment is January 1, 2012.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

AGREEMENT

WHEREAS, the County and Contractor wish to amend the Agreement to extend the term end date to allow for existing services to continue.

RECITALS

This Amendment No. 1 to Professional Services Agreement ("Agreement"), dated January 1, 2012, is entered into by and between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Marcie Bracco Cain (Contractor), with respect to the following:

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN Marcie Bracco Cain AND
THE NATIVIDAD MEDICAL CENTER
FOR
Marketing & Public Relations Consulting Services**



AM Nativid Medical Center

COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES

(NOT TO EXCEED \$100,000)

This Professional Services Agreement (hereinafter "Agreement") is made by and between Nativid Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California and Marcie Bracco Cain (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

SERVICES TO BE PROVIDED. NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of the Agreement. The services are generally described as follows: Marketing and Public Relations Consulting Services

1. PAYMENTS BY NMC. NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$100,000

2. TERM OF AGREEMENT. The term of this Agreement is from Jan 1, 2012 to Dec 31, 2012. Unless sooner terminated pursuant to the terms of this Agreement, this Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

3. ADDITIONAL PROVISIONS/EXHIBITS. The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A/Schedule A: Scope of Services/Payment Provisions

4. PERFORMANCE STANDARDS.

4.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.

4.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

8.2. Qualifying Insurers; All coverages except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Bests Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

8.3. Insurance Coverage Requirements; Without limiting Contractor's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, If CONTRACTOR employs other in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.

9.2. NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.

9.3. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

9.4. Access to and Audit of Records. NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

9.5. Royalties and Inventions. NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.

10. NON-DISCRIMINATION. During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

11. COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT. If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.

12. INDEPENDENT CONTRACTOR. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled

NMC, Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

14.7. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

14.8. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

14.9. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

14.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

14.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

14.12. Non-exclusive Agreement. This Agreement is non-exclusive and both NMC and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

14.13. Construction of Agreement. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

14.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

14.15. Integration. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, Representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.

14.16. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

APPENDUM TO COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES
(NOT TO EXCEED \$100,000)

The Professional Services Agreement between Natividad Medical Center and Marci Bracco Cain ("Contractor") is modified as follows:

Section 4.3 (after the first sentence): Contractor shall be responsible for all costs and expenses incidental to the performance of services, including, but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor including, but not limited to, corporate income tax, sales and excise taxes or amounts levied thereon, and all other of Contractor's costs of doing business.

Section 5 - add the following sections:
Section 5.3: Performance Requirements. The services must be performed in full compliance at all times with the requirements of this Agreement and to the satisfaction of NMC.
Section 5.4: Contractor Staff Approval. NMC shall have the right to disapprove of any member of Contractor's staff assigned to perform services under this Agreement.

Section 12 - add the following sections:

Section 12.1: Employment Related Claims. Contractor agrees that it shall be solely responsible for the direction, supervision, counseling and discipline of its employees, including the conducting of informal and formal performance evaluations. Contractor agrees to be solely responsible for all matters relating to compensation of its employees, subcontractors, agents, partners or consultants including but not limited to compliance with federal and state and local wage and hour laws, laws governing workers' compensation, Social Security, lay-off or termination compensation, withholding and payment of any and all federal, state and local personal income taxes, disability/death insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits. At Contractor's expense as described herein, Contractor agrees to defend, indemnify, and hold harmless NMC, its officers, agents, employees, members, subsidiaries, parent, affiliates, and successors in interest from and against any claim, demand, action, proceeding, threatened or actual judgment, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees as provided herein arising out of Contractor's or NMC's alleged failure to pay, when due, all such compensation, premiums, taxes and obligations and including any claim of whatever nature brought by any employee of Contractor or applicant for employment, arising out of the hiring, or failure to hire the employee/applicant, or arising out of any aspect of his/her employment by Contractor and the termination thereof (collectively referred to for purposes of this Section as "Employment Claim(s)"). Contractor shall pay to NMC any expenses or charges relating to or arising from any such Employment Claim(s) as they are incurred by NMC.
Section 12.2: Common-Law Employees. The foregoing shall apply to Contractor and Contractor's employees and agents even if Contractor or any of Contractor's employees or agents are subsequently reclassified by any court or governmental agency as a common-law employee for periods during which services were performed under this Agreement.

Section 14.7 - add the following prior to the last sentence:
Any purported assignment or delegation not consented to by NMC shall be void at NMC's option and shall constitute a material breach of this Agreement.

Section 14.17 - add this section:
Authority. Contractor has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, and Contractor's performance of this Agreement does not violate or conflict with any agreement to which Contractor is a party.
Contractor further represents that there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement.