

AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES

THIS AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES

("Agreement") is made and entered into by and between the **COUNTY OF MONTEREY** ("COUNTY") and **HOOPER, LUNDY & BOOKMAN, P.C.** ("ATTORNEY").

RECITALS

This Agreement is made with respect to the following facts:

A. The Board of Supervisors may contract for legal services for the County when it is necessary and appropriate that special legal services be performed for the County and its officers and employees.

B. County desires to retain ATTORNEY to provide legal advice regarding confidential healthcare law matters. Accordingly, the County Counsel will provide direction with respect to its nature.

C. David P. Henninger and Lawrence D. Getzoff are specially trained, experienced, expert, and competent to perform the legal services required. County specifically seeks the expertise of David P. Henninger and Lawrence D. Getzoff, and enters into this agreement with the understanding that David P. Henninger and Lawrence D. Getzoff will be the primary attorneys providing services under this Agreement, although other attorneys in the firm may be utilized on an as-needed basis.

NOW, THEREFORE, the parties agree as follows:

1. EFFECTIVE DATE AND TERM

1.01 This Agreement shall be effective as of July 1, 2018 to June 30, 2021, unless sooner terminated pursuant to the terms of this Agreement. This Agreement may be amended from time-to-time upon the mutual agreement of the parties.

2. SERVICES TO BE PERFORMED

2.01. Services to be Performed by ATTORNEY. COUNTY hereby hires ATTORNEY to render independent legal services to COUNTY, subject to the terms of this Agreement. The primary attorneys providing services hereunder shall be David P. Henninger and Lawrence D. Getzoff, although other attorneys in the firm may be utilized on an as-needed basis. ATTORNEY shall perform said services faithfully and well, when needed by and as requested by COUNTY. The services to be performed under this Agreement shall consist of providing advice to COUNTY regarding a confidential personnel matter.

A specific scope of work is enclosed as Exhibit A, and incorporated herein by reference. ATTORNEY shall perform only such services as are within the expertise of the individual

attorneys on ATTORNEY's staff, and ATTORNEY will notify COUNTY promptly if any work requested is beyond such expertise. ATTORNEY shall diligently provide such legal services as are necessary and approved by COUNTY in a professional, timely manner. ATTORNEY shall perform all of its services with due regard to ethical guidelines and the client's interests.

2.02. No Conflicts of Interest. ATTORNEY does not have an actual or potential interest adverse to COUNTY nor does ATTORNEY presently represent a person or firm with an interest adverse to COUNTY with respect to the matter accepted. An exception is that ATTORNEY may represent land use clients who have interests which are actually or potentially adverse to the COUNTY.

2.03. Direction from and Consultation with County Counsel. ATTORNEY shall coordinate and consult with, and receive direction from County Counsel in providing services under this Agreement. Unless otherwise directed by County Counsel, if ATTORNEY prepares any written documents to be delivered or used by COUNTY in the performance of services under this Agreement, including but not limited to COUNTY resolutions, staff reports, and memoranda to the Board of Supervisors, CAO, Natividad Medical Center Board of Trustees or other County legislative or advisory bodies or officers, ATTORNEY shall provide such drafts to County Counsel for review and consultation prior to finalizing any such drafts.

2.04. Reporting Requirements. ATTORNEY shall provide COUNTY with such reports as may be requested by COUNTY in connection with the performance of services hereunder.

2.05. Closing Report. If this Agreement is terminated as set forth herein, or if for any reason ATTORNEY is no longer retained by COUNTY with respect to this matter, ATTORNEY shall submit a Closing Report describing the status of the matter, setting forth any information needed by another attorney to handle the matter. The Closing Report will be expeditiously submitted, together with necessary executed Substitutions of Attorneys, to County Counsel.

2.06. Oral Reports. ATTORNEY shall immediately report orally to County Counsel, in person or by telephone, any event or discovery which is of an urgent nature or requires the immediate attention of COUNTY. ATTORNEY shall promptly follow up such oral report with a Status Report or Status Update reiterating such event or discovery. ATTORNEY shall immediately advise County Counsel in writing if an actual or potential conflict of interest arises or is discovered.

3. COMPENSATION

3.01. Compensation to Attorney. As consideration for ATTORNEY's performance of services under this Agreement, COUNTY shall pay to ATTORNEY the fees and necessary expenses calculated in accordance with the hourly rate and expense method of billing. Fees and expenses are to be charged in accordance with the terms of this agreement and in accordance with the hourly rates for partners, associates, paralegals, and planners, if any, of ATTORNEY and any other terms governing fees set forth in Exhibit B, attached hereto and incorporated herein by reference.

3.02. Budget. ATTORNEY and COUNTY agree that the initial budget for services pursuant to this Agreement shall not exceed the sum of \$ 900,000.00. ATTORNEY and COUNTY shall revise the budget as necessary to reflect additional fees and expenses required for services, and this Agreement shall be amended accordingly to provide for such budget increases. Proposed budget increases must be approved by COUNTY before increased charges or expenditures are accrued. ATTORNEY shall notify the County Counsel in writing when fifty percent (50%) and seventy-five percent (75%) of the Budget has been spent. If COUNTY does not approve additional fees and expenses required by the project beyond the initial and revised budget, COUNTY hereby consents to ATTORNEY's withdrawal as co-counsel in any cases.

3.03. Maximum Liability. The maximum amount of COUNTY's liability over the full term of this Agreement (including all items paid under paragraph 3.04) shall include the initial budget amount and any revised budget amount as provided in paragraph 3.02.

3.04. Reimbursement for Expenses.

(a) COUNTY shall reimburse ATTORNEY for all actual and necessary expenses for the following items:

- (1) Deposition and transcript fees;
- (2) Filing fees;
- (3) Postage;
- (4) Consultant and expert witness fees;
- (5) Photocopying;
- (6) Automobile travel;
- (7) Computerized legal research; and
- (8) Other expenses when approved in advance.

(b) COUNTY will not reimburse ATTORNEY for any non-attorney staff time or overtime for secretarial, clerical, or word processing costs connected with preparing required status reports, time spent to provide information for a fee audit, or for work not authorized by COUNTY.

3.05. Monthly Claims by Attorney. Not later than ten days after the last day of each month, ATTORNEY shall submit to COUNTY a claim, on a form or in a format approved by COUNTY, setting forth in detail the time and expense items incurred by ATTORNEY during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as COUNTY may require. The fees charges shall be calculated correctly, contain no charges previously billed, and be consistent with the approved hourly fee schedule and budget maximum set forth in Exhibit B. The following information shall be set forth accurately in or attached to the billing invoice:

(a) Case name, court number, County Counsel file number or other identification of subject matter for which ATTORNEY rendered services;

(b) Staffing level, hourly rate, and detailed time and activity descriptions for each attorney, paralegal, and/or planner, including but not limited to time spent with respect to conferences, correspondence, telephone calls, hearings, meetings, research, project review, depositions, document filing, and trials; and

(c) Invoices supporting all outside costs.

3.06. Payment of Monthly Claims by COUNTY. It is understood that ATTORNEY's fees and charges shall be paid out of Natividad Medical Center's budget and that ATTORNEY's fees and charges shall not be paid out of the budget of County Counsel's Office. County Counsel's Office shall review the ATTORNEY's fees and charges and submit them to Natividad Medical Center. COUNTY, through Natividad Medical Center, shall certify ATTORNEY's claim, either in the requested amount or in such other amount as County Counsel approves in conformity with this Agreement. Natividad Medical Center shall promptly submit such certified claim to the Auditor for COUNTY. The Auditor shall thereafter pay the balance of the certified claim not later than 45 days after receipt of the certified claim.

3.07. Disputed Payment Amount. If for any claim COUNTY certifies a lesser amount than the amount requested, and if ATTORNEY desires to dispute the amount so certified, ATTORNEY must submit a written notice of protest to COUNTY within 20 days after ATTORNEY's receipt of the certification. The parties shall then promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.

3.08. Conflicting Payment Provisions. The provisions regarding payment set forth in this portion of the Agreement prevail over any conflicting provisions that may be found in any of the exhibits to this Agreement.

4. INDEMNIFICATION, INSURANCE, AND ARBITRATION/MEDIATION

4.01. Indemnification.

(a) Indemnification for Professional Liability. For liability arising from professional and technical services provided under this Agreement, ATTORNEY shall indemnify, defend and hold harmless County, its governing board, officers, agents, and employees from any loss, injury, damage, expense and liability to the extent arising out of the negligence of ATTORNEY, its employees, or agents.

(b) General Indemnification. For any liability, other than arising out of professional and technical services, ATTORNEY shall indemnify, defend and hold harmless, County, its governing board, officers, agents, and employees from any loss, injury, damage, expense and liability resulting from injury to or death of any person and loss of or damage to property, or claim of such injury, death, loss or damage caused by an act or omission in the performance under this Agreement by ATTORNEY, its employees, or agents, excepting only

loss, injury or damage caused by the sole negligence or willful misconduct of the County.

Notwithstanding the foregoing two paragraphs, ATTORNEY's contract indemnity obligation shall be limited to indemnity liability for which ATTORNEY is insured by the program of insurance described in described in Section 4.04(d) of this Agreement.

4.02. Evidence of Coverage. Prior to commencement of this Agreement, ATTORNEY shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, ATTORNEY upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to the COUNTY, unless otherwise directed. This approval of insurance shall neither relieve nor decrease the liability of ATTORNEY.

4.03. Qualifying Insurers. All coverage's, 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 Best's Key Rating Guide or a company of equal financial stability that is approved by COUNTY.

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

(a) 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.

☐ Modification (Justification attached as Exhibit C; subject to approval).

(b) 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 \$1,000,000 per occurrence.

☐ Modification (Justification attached as Exhibit C; subject to approval).

(c) Workers' Compensation Insurance, if ATTORNEY employs others 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.

☐ Modification (Justification attached as Exhibit C; subject to approval).

(d) Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$3,000,000 per claim and \$5,000,000 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 ATTORNEY shall, upon the expiration or earlier termination of the 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.

☐ Modification (Justification attached; subject to approval).

(e) Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to COUNTY and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date ATTORNEY completes its performance of services under this Agreement.

Each liability policy shall provide that COUNTY shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for ATTORNEY and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, and their officers, agents, and employees as Additional Insureds with respect to liability arising out of the ATTORNEY's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County of Monterey and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the ATTORNEY's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by COUNTY, ATTORNEY shall file certificates of insurance with the COUNTY showing that the ATTORNEY has in effect the insurance required by this Agreement. The ATTORNEY shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

ATTORNEY shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by COUNTY, annual certificates to COUNTY. If the certificate is not received by the expiration date, COUNTY shall notify ATTORNEY and ATTORNEY shall have five calendar days to send in

the certificate, evidencing no lapse in coverage during the interim. Failure by ATTORNEY to maintain such insurance is a default of this Agreement which entitles COUNTY, at its sole discretion, to terminate this Agreement immediately.

4.05. Arbitration and Mediation. In the event of any disputes between the parties to this Agreement over professional services rendered, the parties agree to resolve all such disputes through binding arbitration in Los Angeles County before a retired judge of the Los Angeles County Superior Court pursuant to the provisions of California Code of Civil Procedure § 1280, et seq., and the Federal Arbitration Act. Such retired judge shall be selected by mutual agreement of the parties within 15 days of a demand for arbitration by any party. If the parties are unable to select an arbitrator through mutual agreement, an arbitrator shall be designated by the Los Angeles County Superior Court upon petition to that court by any party. The parties agree that speed and cost effectiveness of such arbitration are important to all parties to this agreement, and agree that any such arbitration shall be concluded within 120 days of the date of selection of the arbitrator. The parties also agree that prior to the arbitration, they shall engage in mediation pursuant to a mutually acceptable mediator, to be selected within 15 days of the date of the request for arbitration. If the parties are unable to agree upon a mediator within 15 days of the date of a demand for arbitration by any party, the mediator may be designated by the Los Angeles County Superior Court upon petition by any party. The mediation shall be completed within 60 days of the designation of a mediator. The parties shall share the costs of the arbitrator and the mediator, and each party shall bear its own attorneys' fees for both the mediation and the arbitration.

Notwithstanding the foregoing, in the event of an action by this firm to collect fees, Business and Professions Code § 6201 permits COUNTY to request non-binding arbitration through the local Bar Association, and if either party is unsatisfied with the outcome of the non-binding arbitration, they have the right to request a trial de novo in the Court. With respect to any action or proceeding by this firm to collect fees, COUNTY may elect within 30 days of notice of a demand for arbitration by this firm whether to proceed in accordance with the provisions for binding arbitration or whether to proceed in accordance with the procedures set forth in Business and Professions Code § 6201. If COUNTY does not, the resolution of any such dispute will proceed in accordance with the mediation and arbitration language set forth in the preceding paragraph.

5. TERMINATION

5.01. Termination by COUNTY. COUNTY may terminate this Agreement at any time for its convenience and without cause. Upon such termination, ATTORNEY shall promptly comply with the provisions of paragraph 2.05. COUNTY shall pay to ATTORNEY all sums then due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

5.02. Termination by ATTORNEY. ATTORNEY may terminate this agreement at any time upon giving thirty (30) days written notice to COUNTY. Upon such termination, and unless COUNTY notifies ATTORNEY in writing that it will not need a substitute co-counsel, ATTORNEY shall continue to provide such services as COUNTY may require until such time as COUNTY is able to identify a substitute co-counsel to render necessary services. COUNTY shall not unreasonably delay in identifying such substitute co-counsel or in providing written notice that it will not require a substitute co-counsel. ATTORNEY shall also immediately comply with the provisions of paragraph 2.05. COUNTY shall pay to ATTORNEY all sums due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

6. GENERAL PROVISIONS

6.01. Nonassignment. ATTORNEY shall not assign or transfer this Agreement, or any part thereof, without the written consent of COUNTY, nor shall ATTORNEY assign any monies due or to become due to ATTORNEY hereunder without the previous written consent of COUNTY.

6.02. Independent Contractor. Nothing in this Agreement shall be construed or interpreted to make ATTORNEY anything but an independent contractor and in all ATTORNEY's activities and operations pursuant to this Agreement, ATTORNEY shall for no purposes be considered an employee or agent of COUNTY.

6.03. Authority to Bind COUNTY. It is understood that ATTORNEY, in the performance of any and all duties under this Agreement, has no authority to bind COUNTY to any agreements or undertakings with respect to any and all persons or entities with whom ATTORNEY deals in the course of business.

6.04. Nondisclosure of Information. ATTORNEY shall not disclose, without express written consent of COUNTY, any information relating to COUNTY business which has been submitted by COUNTY to ATTORNEY pursuant to the services to be rendered pursuant to this Agreement. In the event that this Agreement is terminated, ATTORNEY shall immediately return to COUNTY all papers, documents and the like belonging to COUNTY.

6.05. Notices.

(a) Notices permitted or required to be given to the respective parties under this Agreement shall be deemed given (1) when personally delivered to COUNTY care of the Office of the County Counsel or to ATTORNEY's principal partner contact; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the office of the Monterey County Counsel in Salinas, California, or to ATTORNEY's office), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by fax machine to the other party, to the fax number indicated below; or (4) 3 days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below.

(b) Notices mailed to the parties shall be addressed as follows:

To COUNTY:

Stacy L. Sietta
Deputy County Counsel
Office of the County Counsel
County of Monterey
168 West Alisal Street, Third Floor
Phone Number: (831) 755-5045
Fax Number: (831) 755-5283

To ATTORNEY:

David P. Henninger, Esq.
Hooper, Lundy & Bookman, P.C.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
Phone Number: (310) 551-8177
Fax Number: (310) 551-8181

(c) The mailing addresses and fax numbers specified in paragraph (b) may be changed by either party, by giving notice to the other in the manner provided herein.

6.06. Subcontracting. ATTORNEY shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without prior written approval of COUNTY. Any and all subcontracts shall be subject to the provisions contained in this Agreement.

6.07. Modifications. This Agreement may be modified or amended only by written agreement of the parties. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

6.08. Nonwaiver. No covenant or condition of this Agreement can be waived except by the written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by ATTORNEY. COUNTY shall be entitled to invoke any remedy available to COUNTY under this Agreement or by law or in equity despite said forbearance or indulgence.

6.09. Sole Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

6.10. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

6.11. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.

6.12. Exhibits. The following exhibits are attached hereto:

Exhibit A - Scope of Services

Exhibit B - Fees and Expenses

Exhibit C - Business Associate Agreement

IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this Agreement to be executed:

DATED: 7-3-18

COUNTY OF MONTEREY

By Charles J. McKee
Charles J. McKee, Esq.
County Counsel
County of Monterey

DATED: 6/27/18

HOOPER, LUNDY & BOOKMAN, P.C.

By David P. Henninger
David P. Henninger, Esq.

APPROVED AS TO FORM AND LEGALITY

CHARLES J. MCKEE, County Counsel

DATED: 7/3/18

By Stacy L. Saeeta
Stacy L. Saeeta
Deputy County Counsel

[Signature]
7/26/18

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey 7-5-18

EXHIBIT A

SCOPE OF SERVICES

COUNTY retains ATTORNEY to provide specialized legal advice with respect to health care law matters, including public agency transactions; behavioral health and community-based care; health information privacy and security; fraud and abuse, Stark, and Anti-Kickback counseling; and medical staff operations. ATTORNEY is to perform all work necessary to provide the requested advice.

EXHIBIT B

FEES AND EXPENSES

CONTRACTOR's fees are based upon the number of attorney hours devoted to a client's matters, and the then-existing hourly rates for the personnel involved. At present, CONTRACTOR's standard hourly rates range from \$770 to \$995 for principals in the firm, from \$400 to \$770 for associates and senior counsel, and from \$350 to \$410 for paralegals. CONTRACTOR'S most preferred hourly rates range from \$625 to \$835 for principals in the firm, from \$335 to \$650 for associates and senior counsel, and from \$285 to \$325 for paralegals. Variations in CONTRACTOR's current hourly rates may be made in some cases, either upward or downward, to account for complexity of issues, uniqueness of services, expertise of the involved attorney, etc. COUNTY shall be billed at preferred rates for CONTRACTOR's attorneys who provide services for the County. At present, Glenn E. Solomon's standard hourly rate is \$975; COUNTY shall be billed at his most preferred hourly rate of \$740. At present, David P. Henninger's standard hourly rate is \$965; COUNTY shall be billed at his most preferred hourly rate of \$756. At present, Laurence D. Getzoff's standard hourly rate is \$950; COUNTY shall be billed at his most preferred hourly rate of \$745. In addition to our fees, CONTRACTOR also charges for expenses incurred by CONTRACTOR on COUNTY's behalf. These expenses include, but are not limited to, long distance telephone calls, document processing, photocopying, facsimile, delivery costs and travel expenses. Such expenses shall be paid in accordance with COUNTY's Travel Policy.

ATTORNEY will bill all overhead expenses, such as long distance telephone charges, facsimile transmission charges, photocopying and delivery expenses, as costs advanced. ATTORNEY shall submit an invoice to the COUNTY no later than the 10th of the month following the month of service for work performed and costs advanced. Invoices shall be submitted to:

Stacy L. Saetta
Deputy County Counsel
Office of the County Counsel
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

The maximum amount to be paid by COUNTY to ATTORNEY under this agreement shall not exceed **Nine Hundred Thousand Dollars (\$900,000.00)**.