



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5088

Board Order

Agreement No.: A-17786

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

- a. Authorized the Deputy Purchasing Agent for Natividad Medical Center (NMC) to execute Amendment No. 6 to the Agreement (A-17786/MYA510) with Hooper, Lundy & Bookman, Inc. for Legal Services at NMC, extending the Agreement an additional two (2) year period for a revised term of April 1, 2010 through June 30, 2017 and adding \$364,368 for a revised total Agreement amount not to exceed \$2,135,368; and
- b. Authorized the Deputy Purchasing Agent for NMC to execute up to three (3) future Amendments to the Agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) of the original cost of the Agreement, subject to approval of County Counsel.

PASSED AND ADOPTED on this 23rd day of June 2015, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSENT: None

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 78 for the meeting on June 23, 2015.

Dated: June 29, 2015
File ID: A 15-215

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

AMENDMENT NO. 6 TO AGREEMENT NO. A-11786

THIS SIXTH AMENDMENT TO AGREEMENT NO. A-11786 ("AMENDMENT NO. 6") is made and entered, by and between County of Monterey ("COUNTY"), a political subdivision of the State of California on behalf of Natividad Medical Center, an acute care teaching hospital wholly owned and operated by COUNTY, and HOOPER, LUNDY & BOOKMAN, INC. ("ATTORNEY") with respect to the following:

RECITALS

A. ATTORNEY and COUNTY previously entered into AGREEMENT NO. A-11786 for legal services dated April 1, 2010 ("AGREEMENT"), pursuant to which ATTORNEY provides advice and counsel on physician agreements and other healthcare law matters regarding Natividad Medical Center.

B. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 1 to AGREEMENT effective November 1, 2010, increasing COUNTY's maximum liability over the full term of the Agreement to \$350,000, adding \$250,000 and extending the Agreement to June 30, 2011.

C. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 2 to AGREEMENT effective July 1, 2011, increasing COUNTY's maximum liability over the full term of the Agreement to \$650,000, adding \$300,000 and extending the term to June 30, 2012.

D. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 3 to AGREEMENT effective January 1, 2012, increasing COUNTY's maximum liability over the full term of the Agreement to \$1,125,000, adding \$475,000 and extending the term to June 30, 2013.

E. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 4 to AGREEMENT effective July 1, 2013, increasing COUNTY's maximum liability over the full term of the Agreement to \$1,625,000, increasing the professional service rates to be charged by ATTORNEY, adding \$500,000, and extending the term to June 30, 2015.

F. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 5 to AGREEMENT effective July 1, 2014, increasing COUNTY's maximum liability over the full term of the Agreement to \$1,771,000 and adding \$146,000.

G. The AGREEMENT, as amended, is attached hereto as Attachment 1.

H. The parties wish to extend the term by two years to June 30, 2017 and to increase COUNTY's maximum liability over the full term of the Agreement to \$2,135,368, and adding \$364,368.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, COUNTY and ATTORNEY agree as follows:

1. Paragraph 4, Section 6, Rates, Fees and Charges, is amended to extend the term date until June 30, 2017 and to increase the maximum amount of COUNTY's liability over the full term of the Agreement to \$2,135,368.
2. Effective Date of Amendment. This AMENDMENT NO. 6 shall become effective on July 1, 2015.
3. Exhibit A to the Agreement is replaced with Exhibit A-6, attached to this Amendment. All references in the Agreement to Exhibit A shall be construed to refer to Exhibit A-6.
4. Continuing Effect of Agreement. Except as provided herein, all other terms and conditions of AGREEMENT shall remain in full force and effect from the Effective Date of this Amendment.
5. Reference. After the date of this Amendment, any reference to the AGREEMENT shall mean the AGREEMENT as amended by this Amendment.
6. A copy of this AMENDMENT NO. 6 shall be attached to the AGREEMENT.

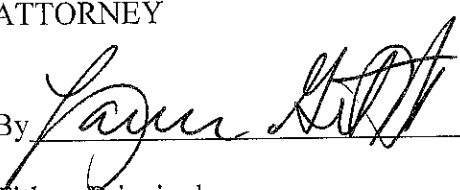
IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this AMENDMENT NO. 6 to be executed:

COUNTY OF MONTEREY
d/b/a Natividad Medical Center

By 
Title: Interim Chief Executive Officer

Date: 6/29/15

ATTORNEY

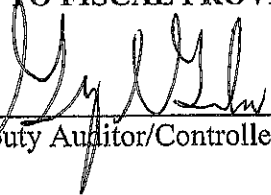
By 
Title: Principal

Date: June 10, 2015

APPROVED AS TO FORM AND LEGALITY:
CHARLES J. McKEE, County Counsel

By 
STACY L. SAETTA
Deputy County Counsel

APPROVED AS TO FISCAL PROVISIONS

By 
Chief Deputy Auditor/Controller

6-11-15

Hooper, Lundy & Bookman, Inc.

April 1, 2010 through June 30, 2017

I. CONTACT INFORMATION

CONTRACTOR:

Glenn E. Solomon, Esq.
Hooper, Lundy, & Bookman, Inc.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8179

David P. Henninger, Esq.
Hooper, Lundy, & Bookman, Inc.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8177

COUNTY:

OFFICE OF THE COUNTY COUNSEL

Charles J. McKee
County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

Stacy L. Saetta
Deputy County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

NATIVIDAD MEDICAL CENTER

Dr. Gary R. Gray, Interim CEO
Natividad Medical Center
1441 Constitutional Boulevard
Salinas, CA 93906
(831) 755-4111

II. SCOPE OF WORK

CONTRACTOR shall:

- A. Provide legal services with respect to physician agreements, and

- B. Other legal healthcare matters and other healthcare matters regarding Natividad Medical Center ("Natividad").

III. PAYMENT PROVISIONS

- A. COUNTY shall pay CONTRACTOR according to Section 6, PAYMENT CONDITIONS, of this agreement.
- B. 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 \$670 to \$865 for principals in the firm, from \$365 to \$705 for associates and senior counsel, and from \$305 to \$350 for paralegals. CONTRACTOR'S most preferred hourly rates range from \$595 to \$795 for principals in the firm, from \$320 to 620 for associates and senior counsel, and from \$270 to \$310 for paralegals. CONTRACTOR's hourly rates may be adjusted periodically. 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 \$805; COUNTY shall be billed at his most preferred hourly rate of \$705. At present, David P. Henninger's standard hourly rate is \$835; COUNTY shall be billed at his most preferred hourly rate of \$720. At present, Laurence D. Getzoff's standard hourly rate is \$820; COUNTY shall be billed at his most preferred hourly rate of \$710. 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.
- C. CONTRACTOR shall submit an invoice to the COUNTY no later than the 10th of the month following the month of service. Invoices shall be submitted to:

Stacy L. Saetta
Deputy County Counsel
County Counsel's Office
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
- D. The maximum amount to be paid by COUNTY to CONTRACTOR under this agreement shall not exceed **Two Million, One Hundred Thirty Five Thousand, Three Hundred Sixty Eight Dollars (\$2,135,368)**.
- E. CONTRACTOR shall provide COUNTY with a detailed statement on a monthly basis, covering its current fees and expenses. It will describe services rendered,

and will also show the amount of COUNTY's retainer remaining in its trust account or the amount owing to CONTRACTOR.

- F. It is understood that CONTRACTOR's fees and charges shall be paid out of Natividad's budget and that CONTRACTOR's fees and charges shall not be paid out of the budget of County Counsel's Office.

IV. ADDITIONAL PROVISIONS

A. Reports

CONTRACTOR shall provide to Monterey County such reports as may be requested by the Board of Supervisors or County Counsel.

B. Agreement to Arbitrate and Mediate

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.

- C. Indemnification. Paragraph 8 of the Agreement shall be replaced in its entirety with the following:

8. Indemnification.

Indemnification for Professional Liability. For liability arising from professional and technical services provided under this Agreement, Hooper Lundy 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 Hooper Lundy, its employees, or agents.

General Indemnification. For any liability, other than arising out of professional and technical services, Hooper Lundy 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 Hooper Lundy, 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, Hooper Lundy's contract indemnity obligation shall be limited to indemnity liability for which Hooper Lundy is insured by the program of insurance described in described in Paragraph 9 of the Agreement and Section IV D. of this Exhibit A.

- D. Professional Liability Insurance. The provision concerning Professional Liability Insurance, located within Paragraph 9.03, Section 9 of the Agreement, shall be replaced in its entirety with the following:

Based on scope of work, CONTRACTOR shall provide professional liability insurance 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 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.



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-17786

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 Natividad Medical Center ("NMC") to execute Amendment No. 5 to the Agreement (A-17786) with Hooper, Lundy & Bookman, Inc. for Legal Services at NMC, adding \$146,000 for the period July 1, 2014, through June 30, 2015, thereby increasing the total maximum liability under the Agreement from \$1,625,000 to \$1,771,000.

PASSED AND ADOPTED on this 1ST day of July 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, 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 77 for the meeting on July 1, 2014.

Dated: July 9, 2014
File Number: A 14-142

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By  Deputy

AMENDMENT NO. 5 TO AGREEMENT NO. A-11786

THIS FIFTH AMENDMENT TO AGREEMENT NO. A-11786 (“AMENDMENT NO. 5”) is made and entered, by and between County of Monterey (“COUNTY”), a political subdivision of the State of California on behalf of Natividad Medical Center, an acute care teaching hospital wholly owned and operated by COUNTY, and HOOPER, LUNDY & BOOKMAN, INC. (“ATTORNEY”) with respect to the following:

RECITALS

A. ATTORNEY and COUNTY previously entered into AGREEMENT NO. A-11786 for legal services dated April 1, 2010 (“AGREEMENT”), pursuant to which ATTORNEY provides advice and counsel on physician agreements and other healthcare law matters regarding Natividad Medical Center.

B. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 1 to AGREEMENT effective November 1, 2010, increasing COUNTY’s maximum liability over the full term of the Agreement to \$350,000, adding \$250,000 and extending the Agreement to June 30, 2011.

C. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 2 to AGREEMENT effective July 1, 2011, increasing COUNTY’s maximum liability over the full term of the Agreement to \$650,000, adding \$300,000 and extending the term to June 30, 2012.

D. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 3 to AGREEMENT effective January 1, 2012, increasing COUNTY’s maximum liability over the full term of the Agreement to \$1,125,000, adding \$475,000 and extending the term to June 30, 2013.

E. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 4 to AGREEMENT effective July 1, 2013, increasing COUNTY’s maximum liability over the full term of the Agreement to \$1,625,000, increasing the professional service rates to be charged by ATTORNEY, adding \$500,000, and extending the term to June 30, 2015.

F. The AGREEMENT, as amended, is attached hereto as Attachment 1.

G. The parties wish to increase COUNTY’s maximum liability over the full term of the Agreement to \$1,771,000, adding \$146,000.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, COUNTY and ATTORNEY agree as follows:

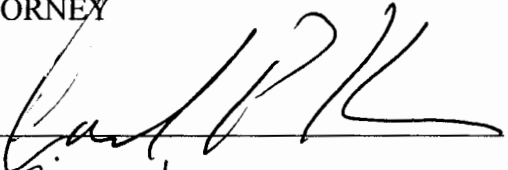
1. Paragraph 4, Section 6, Rates, Fees and Charges, is amended to increase the maximum amount of COUNTY's liability over the full term of the Agreement to \$1,771,000.
2. Effective Date of Amendment. This AMENDMENT NO. 5 shall become effective on July 1, 2014.
3. Exhibit A to the Agreement is replaced with Exhibit A-5, attached to this Amendment. All references in the Agreement to Exhibit A shall be construed to refer to Exhibit A-5.
4. Continuing Effect of Agreement. Except as provided herein, all other terms and conditions of AGREEMENT shall remain in full force and effect from the Effective Date of this Amendment.
5. Reference. After the date of this Amendment, any reference to the AGREEMENT shall mean the AGREEMENT as amended by this Amendment.
6. A copy of this AMENDMENT NO. 5 shall be attached to the AGREEMENT.

IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this AMENDMENT NO. 5 to be executed:

COUNTY OF MONTEREY

ATTORNEY

By _____

By  _____

Title _____

Title Principal _____

Date: _____

Date: May 22, 2014 _____

NATIVIDAD MEDICAL CENTER

By _____

NMC-CEO

Date: _____

APPROVED AS TO FORM:
CHARLES J. McKEE, County Counsel

By Stacy Sabitta
STACY L. SABITTA
Deputy County Counsel

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller 5-27-14
County of Monterey

[Signature]
5-18-14
NONE PURCHASE

Hooper, Lundy & Bookman, Inc.

April 1, 2010 through June 30, 2015

I. CONTACT INFORMATION

CONTRACTOR:

Glenn E. Solomon, Esq.
Hooper, Lundy, & Bookman, Inc.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8179

David P. Henninger, Esq.
Hooper, Lundy, & Bookman, Inc.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8177

COUNTY:

OFFICE OF THE COUNTY COUNSEL

Charles J. McKee
County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

Stacy L. Saetta
Deputy County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

NATIVIDAD MEDICAL CENTER

Harry Weis, CEO
Natividad Medical Center
1441 Constitutional Boulevard
Salinas, CA 93906
(831) 755-4111

II. SCOPE OF WORK

CONTRACTOR shall:

A. Provide legal services with respect to physician agreements, and

- B. Other legal healthcare matters and other healthcare matters regarding Natividad Medical Center ("Natividad").

III. PAYMENT PROVISIONS

- A. COUNTY shall pay CONTRACTOR according to Section 6, PAYMENT CONDITIONS, of this agreement.
- B. 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 \$630 to \$825 for principals in the firm, from \$350 to \$705 for associates and senior counsel, and from \$290 to \$335 for paralegals. CONTRACTOR'S most preferred hourly rates range from \$565 to \$760 for principals in the firm, from \$310 to 620 for associates and senior counsel, and from \$255 to \$295 for paralegals. CONTRACTOR's hourly rates may be adjusted periodically. 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 \$765; COUNTY shall be billed at his most preferred hourly rate of \$670. At present, David P. Henninger's hourly rate is \$795; COUNTY shall be billed at his most preferred hourly rate of \$685. At present, Laurence D. Getzoff's standard hourly rate is \$780; COUNTY shall be billed at his most preferred hourly rate of \$675. 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.
- C. CONTRACTOR shall submit an invoice to the COUNTY no later than the 10th of the month following the month of service. Invoices shall be submitted to:
- Stacy L. Saetta
Deputy County Counsel
County Counsel's Office
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
- D. The maximum amount to be paid by COUNTY to CONTRACTOR under this agreement shall not exceed **One Million, Seven Hundred Seventy One Thousand Dollars (\$1,771,000)**.
- E. CONTRACTOR shall provide COUNTY with a detailed statement on a monthly basis, covering its current fees and expenses. It will describe services rendered,

and will also show the amount of COUNTY's retainer remaining in its trust account or the amount owing to CONTRACTOR.

- F. It is understood that CONTRACTOR's fees and charges shall be paid out of Natividad's budget and that CONTRACTOR's fees and charges shall not be paid out of the budget of County Counsel's Office.

IV. ADDITIONAL PROVISIONS

A. Reports

CONTRACTOR shall provide to Monterey County such reports as may be requested by the Board of Supervisors or County Counsel.

B. Agreement to Arbitrate and Mediate

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.

- C. Indemnification. Paragraph 8 of the Agreement shall be replaced in its entirety with the following:

8. Indemnification.

Indemnification for Professional Liability. For liability arising from professional and technical services provided under this Agreement, Hooper Lundy 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 Hooper Lundy, its employees, or agents.

General Indemnification. For any liability, other than arising out of professional and technical services, Hooper Lundy 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 Hooper Lundy, 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, Hooper Lundy's contract indemnity obligation shall be limited to indemnity liability for which Hooper Lundy is insured by the program of insurance described in described in Paragraph 9 of the Agreement and Section IV D. of this Exhibit A.

- D. Professional Liability Insurance. The provision concerning Professional Liability Insurance, located within Paragraph 9.03, Section 9 of the Agreement, shall be replaced in its entirety with the following:

Based on scope of work, CONTRACTOR shall provide professional liability insurance 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 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.



Monterey County

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Agreement No.: A-17786

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

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 4 to the Agreement (A-17786) with Hooper, Lundy & Bookman, Inc. for Legal Services at NMC, extending the Agreement to June 30, 2015 for a revised total Agreement amount not to exceed \$1,625,000 (and increase of \$500,000 over two years) in the aggregate.


PASSED AND ADOPTED on this 25th day of June 2013, by the following vote, to wit:

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

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 25, 2013.

Dated: June 27, 2013
File Number: A 13-090

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By 
Deputy

**AMENDMENT NO. 4
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN Hooper Lundy & Bookman P.C. AND
THE NATIVIDAD MEDICAL CENTER
FOR
Legal Services**

This Amendment No. 4 to Professional Services Agreement ("Agreement"), dated April 1, 2010 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Lundy & Bookman P.C. (Contractor), with respect to the following:

RECITALS

WHEREAS, the County and Contractor amended the Agreement previously on November 1, 2010 via Amendment No. 1, on July 1, 2011 via Amendment No. 2, and on January 1, 2012 via Amendment No.3; and

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 wish to amend the Agreement to increase the amount of the Agreement because of the term extension.

AGREEMENT

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

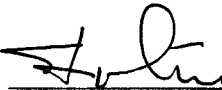
1. Contractor will continue to provide NMC with the same scope of services as stated in the original Agreement (No. A-11786).
2. Amendment-4 to Exhibit A, attached to this Amendment, is hereby incorporated into Exhibit A. All references in the Agreement to Exhibit A shall be construed to refer to Amendment-4 to Exhibit A.
3. Section 2. "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. (A-11786) shall not exceed the total sum of \$1, 625,000 for the full term of the Agreement*".
4. Section 3. "TERM OF AGREEMENT" shall be amended by removing, "*The term of this Agreement is from April 1, 2010 to March 31, 2011 unless sooner terminated pursuant to this Agreement*" and replacing it with "*The term of this Agreement is from April 1, 2010 to June 30, 2015 unless sooner terminated pursuant to this Agreement*".
5. Except as provided herein, all remaining terms, conditions and provisions of the Agreement and Amendment Nos.1, 2, and 3 are unchanged and unaffected by this Amendment and shall continue in full force and effect as set forth in the Agreement.
6. A copy of this Amendment and all previous amendments shall be attached to the original Agreement (No. A-11786).
7. The effective date of this Amendment is July 1, 2013.

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.

Natividad Medical Center


By: 
Sid Cato, NMC Contracts Manager

Date: 7-1-13

By: 
Harry Weis, NMC Chief Executive Officer

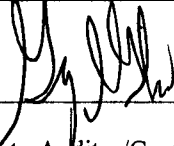
Date: 4/23/13

APPROVED AS TO LEGAL PROVISIONS

By: 
Anne Brauer
Monterey County, Deputy County Counsel

Date: May 2, 2013


APPROVED AS TO FISCAL PROVISIONS

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

Date: 5-2-13

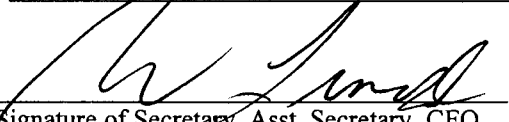
Contractor

HODDER LUNDY & BOOKMAN, P.C.
Contractor's Business Name*** (see instructions)


Signature of Chair, President, or Vice-President

Glenn Soloman - Equity Partner of RFP.
Name and Title

Date: 4/18/2013

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

Robert W. Lundy, Equity Partner, Corp Secretary
Name and Title

Date: 4/18/2013

*****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)

AMENDMENT-4 to EXHIBIT A

NOW, THEREFORE, the parties agree to amend Exhibit A as follows:

1. Section III "PAYMENT PROVISIONS" of Exhibit A is amended by removing paragraph B in its entirety and replacing it with

B. 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 hourly rates range from \$595 to \$785 for principals in the firm, from \$585 to \$655 for senior counsel, from \$350 to \$585 for associates, and from \$275 to \$320 for paralegals. CONTRACTOR's hourly rates may be adjusted periodically. 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 \$720; COUNTY shall be billed at his preferred hourly rate of \$655. At present David P. Henninger's hourly rate is \$760; COUNTY shall be billed at his preferred hourly rate of \$690. 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.

2. Section III , paragraph D of Exhibit A is amended by removing "The maximum amount to be paid by COUNTY to CONTRACTOR under this agreement shall not exceed One Hundred Thousand Dollars (\$100,000.00)" and replacing it with "The maximum amount to be paid by COUNTY to CONTRACTOR under this agreement shall not exceed One Million Six Hundred Twenty Five Thousand Dollars (\$1,625,000.00)."



Monterey County

188 West Alisal Street,
1st Floor
Salinas, CA 93901
831.765.5066

Board Order

Agreement A-17786

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

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 3 to the Agreement (A-17786) with Hooper, Lundy & Bookman, Inc. for Legal Services at NMC, extending the Agreement to June 30, 2013 and adding \$475,000 for Fiscal Year (FY) 2012-13 for a revised total Agreement amount not to exceed \$1,125,000 in the aggregate.

PASSED AND ADOPTED on this 12th day of June 2012, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, and Potter

NOES: None

ABSENT: None

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 12, 2012.

Dated: June 19, 2012
File Number: A 12-037

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Donise Danesek
Deputy

AMENDMENT NO. 3 TO AGREEMENT NO. (A-11786)

THIS THIRD AMENDMENT TO AGREEMENT ("AMENDMENT NO. 3") is made and entered, by and between County of Monterey, a political subdivision of the State of California ("COUNTY"), and HOOPER, LUNDY & BOOKMAN, INC. ("ATTORNEY") with respect to the following:

RECITALS

A. ATTORNEY and COUNTY previously entered into an Agreement No. (A-11786) for legal services dated April 1, 2010 ("AGREEMENT"), pursuant to which ATTORNEY provides advice and counsel on physician agreements and other healthcare law matters regarding Natividad Medical Center.

B. ATTORNEY AND COUNTY previously entered into AMENDMENT NO. 1 TO AGREEMENT effective November 1, 2010, increasing COUNTY's maximum liability over the full term of the Agreement to \$350,000. The AGREEMENT, as amended, is attached hereto as Attachment 1.

C. ATTORNEY AND COUNTY previously entered into AMENDMENT NO. 2 TO AGREEMENT effective July 1, 2011, extending the term of the AGREEMENT to June 30, 2012 and increasing COUNTY's maximum liability over the full term of the Agreement to \$650,000.

D. The parties wish to extend the term of the AGREEMENT to June 30, 2013 and increase COUNTY's maximum liability over the full term of the Agreement to \$1,125,000

AGREEMENT

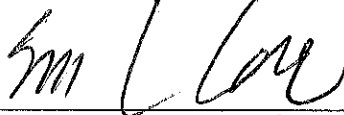
IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, COUNTY and ATTORNEY agree as follows:

1. Paragraph 4, Section 6, Rates, Fees and Charges, is amended to extend the term date until June 30, 2013 and to increase the maximum amount of COUNTY's liability over the full term of the Agreement to \$1,125,000.
2. Effective Date of Amendment. This AMENDMENT NO. 3 shall become effective on January 1, 2012.
3. All other terms and conditions of AGREEMENT shall remain in full force and effect.

4. A copy of this AMENDMENT NO. 3 shall be attached to the AGREEMENT.

IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this AMENDMENT NO. 3 to be executed:

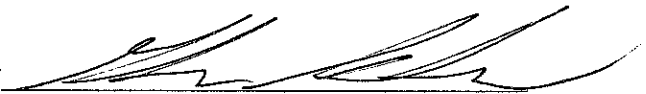
COUNTY OF MONTEREY

By 

Title Non-Contractuals Mgr.

Date: 6-13-12

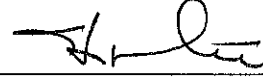
ATTORNEY

By 

Title Principal

Date: March 30, 2012


NATIVIDAD MEDICAL CENTER

By 

NMC-CEO

Date: 4/3/12

APPROVED AS TO FORM:
CHARLES J. McKEE, County Counsel

By 

STACY L. SAETTA
Deputy County Counsel

Reviewed as to fiscal provisions



Auditor-Controller
County of Monterey

4-16-12

AMENDMENT NO. 3 TO AGREEMENT NO. (A-11786)

THIS THIRD AMENDMENT TO AGREEMENT ("AMENDMENT NO. 3") is made and entered, by and between County of Monterey, a political subdivision of the State of California ("COUNTY"), and HOOPER, LUNDY & BOOKMAN, INC. ("ATTORNEY") with respect to the following:

RECITALS

A. ATTORNEY and COUNTY previously entered into an Agreement No. (A-11786) for legal services dated April 1, 2010 ("AGREEMENT"), pursuant to which ATTORNEY provides advice and counsel on physician agreements and other healthcare law matters regarding Natividad Medical Center.

B. ATTORNEY AND COUNTY previously entered into AMENDMENT NO. 1 TO AGREEMENT effective November 1, 2010, increasing COUNTY's maximum liability over the full term of the Agreement to \$350,000. The AGREEMENT, as amended, is attached hereto as Attachment 1.

C. ATTORNEY AND COUNTY previously entered into AMENDMENT NO. 2 TO AGREEMENT effective July 1, 2011, extending the term of the AGREEMENT to June 30, 2012 and increasing COUNTY's maximum liability over the full term of the Agreement to \$650,000.

D. The parties wish to extend the term of the AGREEMENT to June 30, 2013 and increase COUNTY's maximum liability over the full term of the Agreement to \$1,125,000

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, COUNTY and ATTORNEY agree as follows:

1. Paragraph 4, Section 6, Rates, Fees and Charges, is amended to extend the term date until June 30, 2013 and to increase the maximum amount of COUNTY's liability over the full term of the Agreement to \$1,125,000.
2. Effective Date of Amendment. This AMENDMENT NO. 3 shall become effective on January 1, 2012.
3. All other terms and conditions of AGREEMENT shall remain in full force and effect.

4. A copy of this AMENDMENT NO. 3 shall be attached to the AGREEMENT.

IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this AMENDMENT NO. 3 to be executed:

COUNTY OF MONTEREY

ATTORNEY

By 

By 

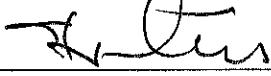
Title NMC CONTRACT MGR

Title Principal

Date: 6-13-14

Date: March 30, 2012

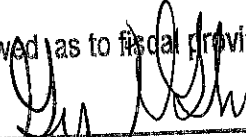
NATIVIDAD MEDICAL CENTER

By 
NMC-CEO

Date: 4/12/12

APPROVED AS TO FORM:
CHARLES J. McKEE, County Counsel

By 
STACY L. SAETTA
Deputy County Counsel

Reviewed as to fiscal provisions

Auditor-Controller
County of Monterey

4-16-12

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Agreement No.: A-11786
Authorize the Purchasing Manager for)
Natividad Medical Center (NMC) to execute)
Amendment No. 2 to the Agreement with)
Hooper, Lundy & Bookman, Inc. for Legal)
Services at NMC in an amount not to exceed)
\$650,000 in the aggregate (an increase of)
\$300,000) and extend the term to June 30,)
2012.....)

Upon motion of Supervisor Salinas, seconded by Supervisor Potter, and carried by those members present, the Board hereby;

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 2 to the Agreement with Hooper, Lundy & Bookman, Inc. for Legal Services at NMC in an amount not to exceed \$650,000 in the aggregate (an increase of \$300,000) and extend the term to June 30, 2012.

PASSED AND ADOPTED on this 8th day of November 2011, by the following vote, to wit:

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

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 75 for the meeting on November 8, 2011.

Dated: November 15, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By *Danielle Hancock*
Deputy

AMENDMENT NO. 2 TO AGREEMENT NO. A-11786

THIS SECOND AMENDMENT TO AGREEMENT NO. A-11786 ("AMENDMENT NO. 2") is made and entered, by and between County of Monterey, a political subdivision of the State of California ("COUNTY"), and HOOPER, LUNDY & BOOKMAN, INC. ("ATTORNEY") with respect to the following:

RECITALS

A. ATTORNEY and COUNTY previously entered into an Agreement No. A-11786 for legal services dated April 1, 2010 ("AGREEMENT"), pursuant to which ATTORNEY provides advice and counsel on physician agreements and other healthcare law matters regarding Natividad Medical Center.

B. ATTORNEY AND COUNTY previously entered into AMENDMENT NO. 1 TO AGREEMENT effective November 1, 2010, increasing COUNTY's maximum liability over the full term of the Agreement to \$350,000. The AGREEMENT, as amended, is attached hereto as Attachment 1.

C. The parties wish to extend the term of the AGREEMENT to June 30, 2012 and COUNTY's maximum liability over the full term of the Agreement to \$650,000.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, COUNTY and ATTORNEY agree as follows:

1. Paragraph 4, Section 6, Rates, Fees and Charges, is amended to extend the term date until June 30, 2012 and to increase the maximum amount of COUNTY's liability over the full term of the Agreement to \$650,000.
2. Effective Date of Amendment. This AMENDMENT NO. 2 shall become effective on July 1, 2011.
3. All other terms and conditions of AGREEMENT shall remain in full force and effect.
4. A copy of this AMENDMENT NO. 2 shall be attached to the AGREEMENT.

IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this AMENDMENT NO. 2 to be executed:

COUNTY OF MONTEREY

By GM L. GATO
Title CONTRACTS MGR.
Date: 11-29-11

ATTORNEY

By [Signature]
Title Principal
Date: 9/7/11

NATIVIDAD MEDICAL CENTER

By [Signature]
NMC-CEO
Date: 8/19/11

APPROVED AS TO FORM:
CHARLES J. McKEE, County Counsel

By [Signature]
STACY L. SABBTA
Deputy County Counsel

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey
9-28-11

Before the Board of Supervisors in and for the
County of Monterey, State of California

Agreement No.: A-11786

Authorize the Purchasing Manager for)
Natividad Medical Center (NMC) to execute)
the Amendment No.1 to the Agreement with)
Hooper, Lundy & Bookman, Inc. for Legal)
Services at NMC in an amount not to exceed)
\$350,000 (an increase of \$250,000) for the)
period November 1, 2010 to November 30,)
2011.)

Upon motion of Supervisor Armenta, seconded by Supervisor Potter, and carried by those members present, the Board hereby;

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute the Amendment No.1 to the Agreement with Hooper, Lundy & Bookman, Inc. for Legal Services at NMC in an amount not to exceed \$350,000 (an increase of \$250,000) for the period November 1, 2010 to November 30, 2011.

PASSED AND ADOPTED this 11th day of January 2011, by the following vote, to wit:

- AYES: Supervisors Armenta, Calcagno, Salinas, Parker, Potter
- NOES: None
- ABSENT: None

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 75 for the meeting on January 11, 2011.

Dated: January 18, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Donise Hancock
Deputy

AMENDMENT NO. 1 TO AGREEMENT NO. (A-11786)

THIS FIRST AMENDMENT TO AGREEMENT ("AMENDMENT NO. 1") is made and entered into as of November 8, 2010, by and between County of Monterey ("COUNTY") and HOOPER, LUNDY & BOOKMAN, INC. ("ATTORNEY") with respect to the following:

RECITALS

A. ATTORNEY and COUNTY have entered into an Agreement No. (A-11786) for legal services dated ("AGREEMENT") dated April 1, 2010, pursuant to which ATTORNEY provides advice and counsel on physician agreements and other healthcare law regarding Natividad Medical Center.

B. The parties wish to extend the term and maximum liability under the AGREEMENT.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, COUNTY and ATTORNEY agree as follows:

1. Paragraph 4, Section 6, Rates, Fees and Charges, is amended to extend the term date until November 30, 2011 and to increase the maximum amount of COUNTY's liability over the full term of this Agreement to \$350,000.
2. Effective Date of Amendment. This AMENDMENT NO. 1 shall become effective on November 1, 2010.
3. All other terms and conditions of AGREEMENT shall remain in full force and effect.
4. A copy of this AMENDMENT NO. 1 shall be attached to the AGREEMENT.

IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this AMENDMENT NO. 1 to be executed:

COUNTY OF MONTEREY

ATTORNEY

By [Signature]
Title Director of Purchasing
Date: 2/4/2011

By [Signature]
Title Glenn Solomon Partner
Date: 11/11/10

NATIVIDAD MEDICAL CENTER

By [Signature]
NMC-CEO
Date: 11.6.10

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey 11-18-10

APPROVED AS TO FORM;
CHARLES J. McKEE, County Counsel

By [Signature]
STACY L. SAETTA
Deputy County Counsel

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

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Hooper, Lundy & Bookman, Inc.
(hereinafter "CONTRACTOR").

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

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The services are generally described as follows:

Provide Analysis and potential negotiation of physician agreements; other healthcare matters regarding Natividad Medical Center ("Natividad"), a general acute care teaching hospital owned and operated by the County and located in Salinas, California.

2. **PAYMENTS BY COUNTY.** County 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 County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 100,000.00.

3. **TERM OF AGREEMENT.** The term of this Agreement is from April 1, 2010 to March 31, 2011, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

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

Exhibit A Scope of Services/Payment Provisions
Exhibit B HIPAA Business Associate Agreement

5. **PERFORMANCE STANDARDS.**

5.01. 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 the County, or immediate family of an employee of the County.

5.02. 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.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR

shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

7. TERMINATION.

7.01. During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. **INDEMNIFICATION.** ~~Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.~~ *DPH* *CM - see Ex. A.*

9. INSURANCE.

9.01. Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor 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, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County'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 the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 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 the County's Purchasing Manager.

9.03 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 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.

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 to engage 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).

9.04. Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to the 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 CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the 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 Contractor 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, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'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 and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'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 the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR 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.

CONTRACTOR 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's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

10.01. Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such 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.

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

10.03. 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.

10.04. Access to and Audit of Records. The County 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 the County or as part of any audit of the County, 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.

10.05. Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others 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 County.

11. **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, fully 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.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
13. **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 the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this

Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Charles J. McKee, County Counsel	Glenn E. Solomon, Esq.
Name and Title	Name and Title
County of Monterey 168 West Alisal Street, 3rd Floor Salinas, CA 93901	Hooper, Lundy, & Bookman, INC. 1875 Century Park East, Suite 1600 Los Angeles, CA 90067
Address	Address
(831) 755-5045	(310) 551-8179
Phone	Phone

15. **MISCELLANEOUS PROVISIONS.**

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County 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.

- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County 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.
- 15.14 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.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County 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 the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 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.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]
Contracts/Purchasing Manager

Date: 7-8-10 Chase

By: _____
Department Head (if applicable)

Date: _____

Approved as to Form¹

By: [Signature]
County Counsel

Date: 6-30-10

Approved as to Fiscal Provisions²

By: [Signature]
Auditor/Controller

Date: 7-8-10

RISK MANAGEMENT
COUNTY OF MONTEREY

Approved as to Liability Provisions
INSURANCE LANGUAGE

By: [Signature]
Risk Management

Date: 7/8/10

Hooper, Lundy & Bookman, Inc.
Contractor's Business Name*

By: [Signature]
(Signature of Chair, President, or Vice-President)*

David P. Henniger, Principal
Name and Title

Date: 06/17/10

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Name and Title

Date: _____

*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. 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. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required only if changes are made to the standard provisions of the PSA

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in paragraph 8 or 9

Hooper, Lundy & Bookman, Inc.

April 1, 2010 through March 31, 2011

I. CONTACT INFORMATION

CONTRACTOR:

Glenn E. Solomon, Esq.
Hooper, Lundy, & Bookman, Inc.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8179

David P. Henninger, Esq.
Hooper, Lundy, & Bookman, Inc.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8177

COUNTY:

OFFICE OF THE COUNTY COUNSEL

Charles J. McKee
County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

Stacy L. Sietta
Deputy County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

William M. Litt
Deputy County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

NATIVIDAD MEDICAL CENTER

Harry Weis, CEO
Natividad Medical Center
1441 Constitutional Boulevard
Salinas, CA 93906
(831) 755-4111

II. SCOPE OF WORK

CONTRACTOR shall:

- A. Provide legal services with respect to physician agreements, and
- B. Other legal healthcare matters and other healthcare matters regarding Natividad Medical Center ("Natividad").

III. PAYMENT PROVISIONS

- A. COUNTY shall pay CONTRACTOR according to Section 6, PAYMENT CONDITIONS, of this agreement.
- B. 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 hourly rates range from \$495 to \$685 for principals in the firm, from \$295 to \$480 for associates, and from \$230 to \$265 for paralegals. CONTRACTOR's hourly rates may be adjusted periodically. 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 \$595.00; COUNTY shall be billed at his preferred hourly rate of \$540. At present, David P. Henninger's hourly rate is \$660; COUNTY shall be billed at his preferred hourly rate of \$600. 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.
- C. CONTRACTOR shall submit an invoice to the COUNTY no later than the 10th of the month following the month of service. Invoices shall be submitted to:

Stacy L. Saetta
Deputy County Counsel
County Counsel's Office
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
- D. The maximum amount to be paid by COUNTY to CONTRACTOR under this agreement shall not exceed **One Hundred Thousand Dollars (\$100,000.00)**.
- E. CONTRACTOR shall provide COUNTY with a detailed statement on a monthly basis, covering its current fees and expenses. It will describe services rendered,

and will also show the amount of COUNTY's retainer remaining in its trust account or the amount owing to CONTRACTOR.

- F. It is understood that CONTRACTOR's fees and charges shall be paid out of Natividad's budget and that CONTRACTOR's fees and charges shall not be paid out of the budget of County Counsel's Office.

IV. ADDITIONAL PROVISIONS

A. Reports

CONTRACTOR shall provide to Monterey County such reports as may be requested by the Board of Supervisors or County Counsel.

B. Agreement to Arbitrate and Mediate

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

EXHIBIT A

not, the resolution of any such dispute will proceed in accordance with the mediation and arbitration language set forth in the preceding paragraph.

- C. Indemnification. Paragraph 8 of the Agreement shall be replaced in its entirety with the following:

8. Indemnification.

Indemnification for Professional Liability. For liability arising from professional and technical services provided under this Agreement, Hooper Lundy 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 Hooper Lundy, its employees, or agents.

General Indemnification. For any liability, other than arising out of professional and technical services, Hooper Lundy 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 Hooper Lundy, 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, Hooper Lundy's contract indemnity obligation shall be limited to indemnity liability for which Hooper Lundy is insured by the program of insurance described in described in Paragraph 9 of the Agreement and Section IV D. of this Exhibit A.

- D. Professional Liability Insurance. The provision concerning Professional Liability Insurance, located within Paragraph 9.03, Section 9 of the Agreement, shall be replaced in its entirety with the following:

Based on scope of work, CONTRACTOR shall provide professional liability insurance 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 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.

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective April 1, 2010, by and between **MONTEREY COUNTY**, hereinafter referred to as "Covered Entity", and **Hooper, Lundy & Bookman, Inc.**, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule (the agreement evidencing such arrangement is entitled **County of Monterey Agreement for Professional Services**, with a term of April 1, 2010 through March 31, 2011, and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information,

that relates to the past, present, or future physical or mental health or 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 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.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

II. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate agrees:

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach

is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:
MONTEREY COUNTY

BUSINESS ASSOCIATE:
HOOPER, LUNDY & BOOKMAN,
INC.

By: 

By: 

Title: Purchasing Manager *Office*

Title: *Principal*

Date: 7-8-10

Date: 6/17/10