



# COUNTY OF MONTEREY - BOARD OF SUPERVISORS

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File #:	A 14-142	Name:	Hooper, Lundy & Bookman, Amendment No. 5
Type:	BoS Agreement	Status:	Consent Agenda
File created:	6/10/2014	In control:	Board of Supervisors
On agenda:	7/1/2014	Final action:	
Title:	Authorize 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.		
Attachments:	1. <a href="#">Hooper, Lundy, &amp; Bookman Inc., Amendment No. 5.pdf</a> , 2. <a href="#">Prior Agreements.pdf</a> , 3. <a href="#">Hooper Lundy &amp; Bookman Spend Sheet.pdf</a> , 4. <a href="#">Completed Board Order</a>		

[History \(0\)](#)
[Board Report](#)

## Title

Authorize 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.

## Report

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

Authorize 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.

Hooper, Lundy & Bookman is the largest full service law firm in the country, with offices in San Francisco, Los Angeles, San Diego, and Washington, D.C., dedicated solely to the legal representation of health care providers in Medicare Medicaid payments, health care business transactions, licensing and certification.

Hooper, Lundy & Bookman provides legal services to the County of Monterey, to ensure that the County's agreements comply with state and federal healthcare and Medicare compliance laws. The potential sanctions for noncompliance with these laws are severe and include civil and criminal liability, as well as debarment or exclusion from participation in Medicare. Additionally, the firm provides advice on medical staff issues and agreements with commercial payors.

**OTHER AGENCY INVOLVEMENT:**

County Counsel has reviewed and approved this Amendment No. 5 as to legal form and risk provisions. Auditor-Controller has reviewed and approved this Amendment No. 5 as to fiscal provisions. The CAO-Budget and Analysis Division has advised to inform the BOS the spending authority (appropriations) associated with NMC's FY 2014 Adopted Budget has been exceeded and approval and authorization for modification of NMC's appropriation budget should be presented to the BOS. Since NMC is an Enterprise Fund, this does not prevent continued expenditures, but it is considered good public policy, transparency and fiscal management. The Amendment No. 5 has also been reviewed and approved by Natividad Medical Center's Finance Committee (May 29, 2014) and Board of Trustees (June 6, 2014).

**FINANCING:**

The cost for this Amendment No.5 is \$146,000 for a revised total Agreement amount not to exceed \$1,771,000. \$146,000 is included in the Fiscal Year 2014/2015 Recommended Budget. Amounts for remaining years of the Agreement/Amendment will be included in those budgets as appropriate. NMC is confirming its appropriations position and if its spending authority has been exceeded will return to the Board. There is no impact to the General Fund.

Prepared by: Daniel Leon, Chief Financial Officer, 783-2561  
Approved by: Harry Weis, Chief Executive Officer, 783-2553

Attachments: Amendment No. 5, Original Agreement, Amendment Nos. 1, 2, 3 and 4, Spend Sheet  
Attachments on file with the Clerk to the Board's Office



## 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 1<sup>ST</sup> 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:

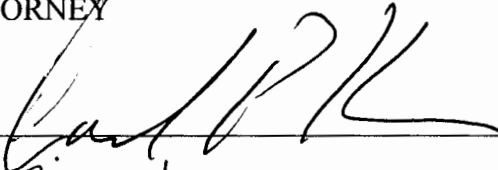
1. Paragraph 4, Section 6, Rates, Fees and Charges, is amended to increase the maximum amount of COUNTY's liability over the full term of the Agreement to \$1,771,000.
2. Effective Date of Amendment. This AMENDMENT NO. 5 shall become effective on July 1, 2014.
3. Exhibit A to the Agreement is replaced 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 10<sup>th</sup> 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, 3<sup>rd</sup> 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 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.