

**RENEWAL AND AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN Nixon Peabody LLP AND
THE NATIVIDAD MEDICAL CENTER
FOR
Legal Services**

This Renewal and Amendment No. 2 to Professional Services Agreement (“Agreement”), dated October 10, 2011 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center (“NMC”), and Nixon Peabody LLP (Contractor), with respect to the following:

RECITALS

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

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

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-12242/MYA503).
2. Section 3. EFFECTIVE DATE OF AMENDMENT AND EXTENSION OF TERM, of Amendment No. 1, as previously amended, is amended to extend the term of the AGREEMENT through June 30, 2014.
3. Except as provided herein, all remaining terms, conditions and provisions of the Agreement and Amendment No.1 is unchanged and unaffected by this Amendment and shall continue in full force and effect as set forth in the Agreement.
4. A copy of this Amendment and all previous amendments shall be attached to the original Agreement (No. A-12242/MYA503).
5. The effective date of this Renewal and Amendment No. 2 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: _____

By:  _____
Harry Weis, NMC Chief Executive Officer

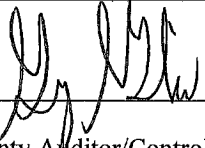
Date: 5/14/13

APPROVED AS TO LEGAL PROVISIONS

By:  _____
Anne Brauer 
Monterey County, Deputy County Counsel

Date: 5/24/13

APPROVED AS TO FISCAL PROVISIONS

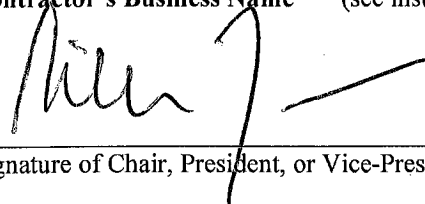
By:  _____
Gary Giboney
Monterey County Auditor/Controller's Office

Date: 5-24-13

Contractor

Nixon Peabody LLP

Contractor's Business Name*** (see instructions)

 _____
Signature of Chair, President, or Vice-President

Partner

Name and Title

Date: May 7, 2013

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

Name and Title

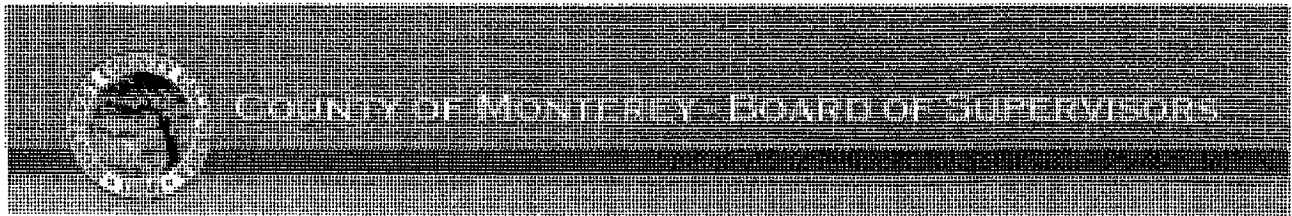
Date: _____

*****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 (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)



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File #:	A 12-057	Version: 1	Name:	Nixon Peabody Amendment #1
Type:	BoS Agreement		Status:	Consent Agenda
File created:	5/2/2012		In control:	Board of Supervisors
On agenda:	6/12/2012		Final action:	
Title:	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 1 to the Agreement with Nixon Peabody LLP for Legal Services at NMC in an amount not to exceed \$300,000 (an increase of \$200,000) increasing the scope of services, and extending the Agreement to June 30, 2013.			
Attachments:	Nixon Peabody, Completed Board Order			

[History \(0\)](#)
 [Text](#)

Title

Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 1 to the Agreement with Nixon Peabody LLP for Legal Services at NMC in an amount not to exceed \$300,000 (an increase of \$200,000) increasing the scope of services, and extending the Agreement to June 30, 2013.

Body

RECOMMENDATION:

It is recommended the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 1 to the Agreement with Nixon Peabody LLP for Legal Services at NMC in an amount not to exceed \$300,000 (an increase of \$200,000) increasing the scope of services, and extending the Agreement to June 30, 2013.

SUMMARY/DISCUSSION:

Nixon Peabody LLP is a Global 100 law firm that has represented the County with respect to public finance matters. On October 10, 2011, the County entered into an agreement for up to \$100,000 to provide legal assistance and advice on various financing matters, including issues regarding changes in hospital structure and governance with respect to Natividad Medical Center. The County continues to require the Nixon firm's counsel with respect to the performance of due diligence regarding the Salinas Valley Memorial Healthcare System affiliation and financing issues related to the structure and governance of Natividad Medical Center. Accordingly, the parties wish to extend its agreement to increase the scope of services, to increase the maximum liability by \$200,000 for a total contract amount of \$300,000 and to extend the term to June 30, 2013.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed and approved this Amendment as to legal form and risk provisions. Auditor-Controller has reviewed and approved this Amendment as to fiscal provisions. The Amendment has also been reviewed and approved by Natividad Medical Center's Board of Trustees.

FINANCING:

The cost of this Amendment No. 1 is \$200,000. \$20,000 is included in the Fiscal Year 2011/12 Budget and \$180,000 is included in the Fiscal Year 2012/13 Recommended Budget. There is no impact to the General Fund.

Prepared by: Stacy Saetta, Deputy County Counsel, 755-5333
Approved by: Harry Weis, Chief Executive Officer, 783-2553

Attachments: Agreement, Amendment No. 1



Monterey County

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

Board Order

Agreement No.: A-12242

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 1 to the Agreement with Nixon Peabody LLP for Legal Services at NMC in an amount not to exceed \$300,000 (an increase of \$200,000) increasing the scope of services, and extending the Agreement to June 30, 2013.

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 22, 2012
File Number: A 12-057

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

By Denise Hancock
Deputy

AMENDMENT NO. 1 TO AGREEMENT FOR SPECIALIZED SERVICES

THIS FIRST AMENDMENT TO AGREEMENT FOR SPECIALIZED SERVICES ("AMENDMENT NO. 1") is made and entered into as of March 1, 2012, by and between County of Monterey ("COUNTY") and NIXON PEABODY LLP ("ATTORNEY") with respect to the following:

RECITALS

A. ATTORNEY and COUNTY have entered into an Agreement for Specialized Services No. SC2526 ("AGREEMENT") dated October 10, 2011, pursuant to which ATTORNEY provides advice and counsel to COUNTY with respect to Natividad Medical Center.

B. The parties wish to amend the scope of service of the AGREEMENT, to extend the term of the AGREEMENT, and to extend the 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 2.02, Budget, is amended to read in its entirety as follows:

"2.02. Budget. ATTORNEY and COUNTY agree that the budget for the project shall not exceed the sum of three hundred thousand dollars (\$300,000). ATTORNEY and COUNTY shall revise the Budget estimates as necessary to reflect actual necessary ongoing fees and expenses required for the project. Proposed budget increases must be approved by COUNTY before increased charges on expenditures are accrued. ATTORNEY shall notify the County Counsel in writing when fifty (50%) and seventy-five (75%) of the Budget has been spent. If COUNTY does not approve additional fees and expenses required by the project beyond the initial and revised budget, COUNTY hereby consents to ATTORNEY's withdrawal in the project."

2. Paragraph 2.03, Maximum Liability, is amended to read in its entirety as follows:

"2.03. Maximum Liability. The maximum amount of COUNTY's liability over the full term of this Agreement (including all items paid under paragraph 2.01) is three hundred thousand dollars (\$300,000). This amount may be amended by

written agreement between the parties, subject to approval by the Board of Supervisors.”

3. Effective Date of Amendment and Extension of Term. This AMENDMENT NO. 1 shall become effective on March 1, 2012. The term of the AGREEMENT shall continue until June 30, 2013.
4. Exhibit A. Exhibit A to the AGREEMENT is hereby amended to read in its entirety as follows:

“COUNTY retains CONTRACTOR to assist and advise the County of Monterey/Natividad Medical Center in all aspects of financing, including issues around a change in hospital structure, governance, and relationship to the County. The assistance should include creative ideas to address existing financing as well as future financing. COUNTY retains CONTRACTOR to assist and advise the County of Monterey/Natividad Medical Center with due diligence in regard to the proposed affiliation with Salinas Valley Memorial Healthcare System. In addition, assistance in crafting related documents should be provided. Understanding that CONTRACTOR may have expertise in other areas of the law relevant to NMC, the parties may desire to expand the scope of these services on short notice. CONTRACTOR may work directly with NMC senior management and County Counsel and shall keep County Counsel fully advised of all activities and advice.”

5. All other terms and conditions of AGREEMENT shall remain in full force and effect.
6. 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

By Sam L. Leo
Title NMC CONSULTANT MGMT.
Date: 6-13-12

ATTORNEY

By Mark Yip
Title Partner
Date: April 17, 2012

NATIVIDAD MEDICAL CENTER

By [Signature]
NMC-CEO

Date: 4/23/12

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

By [Signature]
STACY L. SAETTA
Deputy County Counsel

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey
4-22-12

AMENDMENT NO. 1 TO AGREEMENT FOR SPECIALIZED SERVICES

THIS FIRST AMENDMENT TO AGREEMENT FOR SPECIALIZED SERVICES ("AMENDMENT NO. 1") is made and entered into as of March 1, 2012, by and between County of Monterey ("COUNTY") and NIXON PEABODY LLP ("ATTORNEY") with respect to the following:

RECITALS

A. ATTORNEY and COUNTY have entered into an Agreement for Specialized Services No. SC2526 ("AGREEMENT") dated October 10, 2011, pursuant to which ATTORNEY provides advice and counsel to COUNTY with respect to Natividad Medical Center.

B. The parties wish to amend the scope of service of the AGREEMENT, to extend the term of the AGREEMENT, and to extend the 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 2.02, Budget, is amended to read in its entirety as follows:

"2.02. Budget. ATTORNEY and COUNTY agree that the budget for the project shall not exceed the sum of three hundred thousand dollars (\$300,000). ATTORNEY and COUNTY shall revise the Budget estimates as necessary to reflect actual necessary ongoing fees and expenses required for the project. Proposed budget increases must be approved by COUNTY before increased charges on expenditures are accrued. ATTORNEY shall notify the County Counsel in writing when fifty (50%) and seventy-five (75%) of the Budget has been spent. If COUNTY does not approve additional fees and expenses required by the project beyond the initial and revised budget, COUNTY hereby consents to ATTORNEY's withdrawal in the project."

2. Paragraph 2.03, Maximum Liability, is amended to read in its entirety as follows:

"2.03. Maximum Liability. The maximum amount of COUNTY's liability over the full term of this Agreement (including all items paid under paragraph 2.01) is three hundred thousand dollars (\$300,000). This amount may be amended by

written agreement between the parties, subject to approval by the Board of Supervisors.”

3. Effective Date of Amendment and Extension of Term. This AMENDMENT NO. 1 shall become effective on March 1, 2012. The term of the AGREEMENT shall continue until June 30, 2013.
4. Exhibit A. Exhibit A to the AGREEMENT is hereby amended to read in its entirety as follows:

“COUNTY retains CONTRACTOR to assist and advise the County of Monterey/Natividad Medical Center in all aspects of financing, including issues around a change in hospital structure, governance, and relationship to the County. The assistance should include creative ideas to address existing financing as well as future financing. COUNTY retains CONTRACTOR to assist and advise the County of Monterey/Natividad Medical Center with due diligence in regard to the proposed affiliation with Salinas Valley Memorial Healthcare System. In addition, assistance in crafting related documents should be provided. Understanding that CONTRACTOR may have expertise in other areas of the law relevant to NMC, the parties may desire to expand the scope of these services on short notice. CONTRACTOR may work directly with NMC senior management and County Counsel and shall keep County Counsel fully advised of all activities and advice.”

5. All other terms and conditions of AGREEMENT shall remain in full force and effect.
6. 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

By SM L [Signature]

Title NUME CONSULTANTS MOBIL

Date: 6-13-12

ATTORNEY

By [Signature]

Title Partner

Date: April 17, 2012

NATIVIDAD MEDICAL CENTER

By [Signature]
NMC-CEO

Date: 4/23/12

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

By [Signature]
STACY L. SAETTA
Deputy County Counsel

Reviewed as to fiscal provisions
[Signature]
Auditor/Controller
County of Monterey

4-27-12

AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES

THIS AGREEMENT is made and entered by and between the COUNTY OF MONTEREY, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and Nixon Peabody LLP (hereinafter referred to as "ATTORNEY").

RECITALS

This Agreement is made with respect to the following facts:

- A. The County Board of Supervisors may contract for legal services for the COUNTY when it is necessary and appropriate that special legal services be performed for the COUNTY and its officers and employees.
- B. COUNTY desires to retain ATTORNEY to provide legal advice to the COUNTY with respect to the Natividad Medical Center ("Project").
- C. ATTORNEY is specially trained, experienced, expert, and competent to perform the legal services required. COUNTY specifically seeks the expertise of Richard Jones, and enters into this agreement with the understanding that Mr. Jones will be the primary attorney providing services under this Agreement.

COVENANTS

NOW, THEREFORE, the parties agree as follows:

I. SERVICES TO BE PERFORMED.

1.01. Services to be Performed by ATTORNEY. COUNTY hereby hires ATTORNEY to render independent legal services to the County, subject to the terms of this Agreement. The primary attorney providing services hereunder shall be Richard Jones. ATTORNEY shall perform said services faithfully and well, when needed by and as requested by the County. The services to be performed under this Agreement shall consist of providing legal advice with respect Project as more particularly described in Exhibit A. ATTORNEY shall perform only such services as are within the expertise of the individual attorneys on ATTORNEY's staff, and ATTORNEY will notify COUNTY promptly if any work requested is beyond such expertise. ATTORNEY shall diligently provide such legal services as are necessary and approved by COUNTY in a professional, timely manner. ATTORNEY shall perform all of its services with due regard to ethical guidelines and the client's interests.

1.02. No Conflicts of Interest. ATTORNEY does not have an actual or potential interest adverse to COUNTY nor does ATTORNEY presently represent a person or firm with an interest adverse to COUNTY with respect to the matter accepted. COUNTY recognizes that ATTORNEY represents many other agencies, governments, companies and individuals. Many of those clients rely upon ATTORNEY for general representation. It is possible that during the term of this Agreement, some of ATTORNEY'S current or future clients will have disputes or

transactions with COUNTY. In particular, but not by way of limitation, ATTORNEY regularly represents many underwriters, credit providers and other municipal market participants in transactions unrelated to the COUNTY. ATTORNEY regularly represents Morgan Stanley, J. P. Morgan Securities, Inc., Bank of America Securities, Citigroup and Goldman Sachs, among others, one or more of which may underwrite bonds issued for the project that is the subject of this Agreement. COUNTY agrees that ATTORNEY may represent or continue to represent, or undertake in the future to represent, any of ATTORNEY'S existing clients (whether or not named herein) or new clients in any matter, even if the interests of such other clients in such other matters are directly adverse to COUNTY'S, so long as those matters are not substantially related to our work for COUNTY. COUNTY understands that, in engagement letters with many of ATTORNEY'S other clients, ATTORNEY has received similar agreements to preserve our ability to represent COUNTY.

1.03. Direction from County Counsel. ATTORNEY shall report to and receive direction from County Counsel in providing advice under this Agreement. If ATTORNEY prepares any County documents in the performance of services under this Agreement, including but not limited to County resolutions, staff reports, and memoranda to the Board of Supervisors, Planning Commission, or other County legislative or advisory bodies, ATTORNEY shall provide such drafts to County Counsel for review and consultation prior to finalizing any such drafts.

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

II. COMPENSATION.

2.01. Compensation to Attorney. As consideration for ATTORNEY'S performance of services under this Agreement, COUNTY shall pay to ATTORNEY the fees and necessary expenses calculated in accordance with the hourly rate and expense method of billing. Fees and expenses are to be charged in accordance with the terms of this agreement and in accordance with the hourly rates for partners, associates, paralegals, and planners, if any, of ATTORNEY and any other terms governing fees set forth in Exhibit B, attached hereto and incorporated herein by reference. COUNTY will not pay ATTORNEY for travel time. COUNTY will reimburse ATTORNEY for the actual expenses related to the travel, as set forth below.

2.02. Budget. ATTORNEY and COUNTY agree that the budget for the project shall not exceed the sum of one hundred thousand dollars (\$100,000.00.). ATTORNEY and COUNTY shall revise the Budget estimates as necessary to reflect actual necessary ongoing fees and expenses required for the project. Proposed budget increases must be approved by COUNTY before increased charges or expenditures are accrued. ATTORNEY shall notify the County Counsel in writing when fifty percent (50%) and seventy-five percent (75%) of the Budget has been spent. If COUNTY does not approve additional fees and expenses required by the project beyond the initial and revised budget, COUNTY hereby consents to ATTORNEY'S withdrawal as primary counsel in the project.

2.03. Maximum Liability. The maximum amount of COUNTY's liability over the full term of this Agreement (including all items paid under paragraph 2.01) is one hundred thousand dollars (\$100,000.00). This amount may be amended by written agreement between the parties, subject to approval by the Board of Supervisors.

2.04. Reimbursement for Expenses.

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

- (1) Postage;
- (2) Actual travel expenses, as more fully described in (b) below;
- (3) Photocopying;
- (4) Computerized legal research; and
- (5) Other expenses when approved in advance.

(b) COUNTY will not reimburse ATTORNEY for any non-attorney staff time or overtime for secretarial, clerical, or word processing costs connected with preparing required status reports, time spent to provide information for a fee audit, or for work not authorized by COUNTY. Travel will be reimbursed as follows: Transportation at actual fare for economy or coach class, meals and lodging not to exceed COUNTY per diem unless authorized in advance. COUNTY will not pay ATTORNEY for the travel time.

2.05. Monthly Claims by Attorney. Promptly after the last day of each month, ATTORNEY shall submit to COUNTY a claim, on a form or in a format approved by COUNTY, setting forth in detail the time and expense items incurred by ATTORNEY during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as COUNTY may require. The fees charges shall be calculated correctly, contain no charges previously billed, and be consistent with the approved hourly fee schedule and budget maximum set forth in Exhibit B. The following information shall be set forth accurately in or attached to the billing invoice:

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

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

(c) Invoices supporting all outside costs.

2.06. Payment of Monthly Claims by COUNTY. The County, through the Office of the County Counsel, shall certify ATTORNEY's claim, either in the requested amount or in such other amount as County Counsel approves in conformity with this Agreement. County Counsel shall promptly submit such certified claim to the Auditor for the County of Monterey. The

Auditor shall thereafter pay the balance of the certified claim not later than 45 days after Auditor receives the certified claim.

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

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

III. INDEMNIFICATION AND INSURANCE.

3.01. RESERVED

3.02. Evidence of Coverage. Prior to commencement of this Agreement, the ATTORNEY shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the ATTORNEY 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 ATTORNEY 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 ATTORNEY.

3.03. Qualifying Insurers. All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

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

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

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

(b) Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this

Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

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

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

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

(d) Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$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 ATTORNEY shall, upon the expiration or earlier termination of the Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

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

(e) 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 ATTORNEY 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 ATTORNEY and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

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

10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

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

ATTORNEY shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify ATTORNEY and ATTORNEY shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by ATTORNEY to maintain such insurance is a default of this Agreement which entitles County, at its sole discretion, to terminate this Agreement immediately.

IV. GENERAL PROVISIONS.

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

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

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

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

4.05. Notices.

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

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

To COUNTY:

Office of the County Counsel
County of Monterey
168 West Alisal Street, Third Floor
Salinas, California 93901
Phone Number: (831) 755-5045
Fax Number: (831) 755-5283

To ATTORNEY:

Richard Jones
Nixon Peabody LLP
555 West Fifth Street
Los Angeles, California 90013
Phone Number: (213) 629-6000
Fax Number: (213) 629-6001

To RISK MANAGEMENT:

Risk Management
County of Monterey
168 West Alisal Street, Third Floor
Salinas, California 93901
Phone Number: (831) 755-5457
Fax Number: (831) 755-5459

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

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

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

4.08. Nonwaiver. No covenant or condition of this Agreement can be waived except by the written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard

whatsoever shall not constitute a waiver of the covenant or condition to be performed by ATTORNEY. COUNTY shall be entitled to invoke any remedy available to COUNTY under this Agreement or by law or in equity despite said forbearance or indulgence.

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

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

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

4.12. Exhibits. The following exhibits are attached hereto:

Exhibit A - Scope of Services

Exhibit B - Fees and Expenses

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

COUNTY OF MONTEREY

By: [Signature]
Contracts/Purchasing Officer

Date: 10-10-11

By: [Signature]
Harry Weis, CEO
Natividad Medical Center

Date: 9/19/11

Approved as to Form and Legality^a

By: [Signature]
County Counsel

Date: 9-8-11

Approved as to Fiscal Provisions^b

By: [Signature]
Auditor/Controller

Date: 9/22/11

Approved as to Liability Provisions^c

By: _____
Risk Management

Date: _____

CONTRACTOR

Nixon Peabody LLP
Contractor's Business Name

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

Richard M. Jones, Partner
Name and Title

Date: 9/6/11

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 signature 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.

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

^b Approval by Auditor/Controller is required

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

EXHIBIT A

SCOPE OF SERVICES

COUNTY retains CONTRACTOR to assist and advise the County of Monterey/Natividad Medical Center in all aspects of financing, including issues around a change in hospital structure, governance and relationship to the County. The assistance should include creative ideas to address existing financing as well as future financing. In addition, assistance in crafting related documents should be provided. Understanding that CONTRACTOR may have expertise in other areas of the law relevant to NMC, the parties may desire to expand the scope of these services on short notice. CONTRACTOR may work directly with NMC senior management and County Counsel and shall keep County Counsel fully advised of all activities and advice.

EXHIBIT B

FEES AND EXPENSES

COUNTY shall pay CONTRACTOR the fees and necessary expenses for services performed under this Agreement. The fees and expenses shall be calculated and charged in accordance with the hourly rates and expense method of billing identified below, which include a 10% government discount from CONTRACTOR's regular rates.

CONTRACTOR's hourly rates are as follows:

Partner:	\$706.50
Associate	\$459.00
Paralegal	\$216.00
Law Clerk	\$216.00

Travel: Actual expenses only

Lodging & Meals: Actual—Not to exceed County per diem without prior authorization.

COUNTY will not pay CONTRACTOR for travel time. COUNTY will reimburse ATTORNEY for actual expenses related to the travel in accordance with the above terms.

CONTRACTOR will bill monthly for work performed and costs advanced. CONTRACTOR will bill all overhead expenses, such as long distance telephone charges, facsimile transmission charges, photocopying and delivery expenses, as costs advanced.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/8/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER John L. Wortham & Son, L.P. P. O. Box 1388 Houston, TX 77251-1388	CONTACT NAME: John L. Wortham & Son, L.P.	
	PHONE (A/C, No. Ext): 713-526-3366	FAX (A/C, No): 713-521-1951
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Great Northern Insurance Company		20303
INSURER B: Federal Insurance Company		20281
INSURER C: Chubb Indemnity Insurance Company		12777
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Nixon Peabody LLP
Clinton Square
P.O. Box 31051
Rochester NY 14603

COVERAGES

CERTIFICATE NUMBER: 16284023

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>			35838219	10/1/2012	10/1/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included Policy Aggregate \$ 10,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			73559103	10/1/2012	10/1/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
B C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	71740168 - CA 71740170 - Other States	10/1/2012	10/1/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

County of Monterey, its officers, agents and employees are afforded Additional Insured status per the attached endorsements 80-02-2367 for General Liability and 16-02-0252 for Auto Liability. General Liability coverage is primary per attached endorsement 80-02-2653. Purchase Description- CC8610 issued to Nixon Peabody LLP per the Monterey County Board of Supervisors.

CERTIFICATE HOLDER

Office of the County Counsel
County of Monterey
168 West Alisal Street, Third Floor
Salinas CA 93901

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John L. Wortham & Son, L.P.

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ACORD 25 (2010/05)

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Liability Insurance

Endorsement

Policy Period OCTOBER 1, 2012 TO OCTOBER 1, 2013
Effective Date OCTOBER 1, 2012
Policy Number 3583-82-19 HOU
Insured NIXON PEABODY LLP

Name of Company GREAT NORTHERN INSURANCE COMPANY

Date Issued OCTOBER 18, 2012

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added:

Who Is An Insured

Designated Person Or Organization

Any person or organization designated below is an **insured**; but they are **insureds** only with respect to liability arising out of your operations or premises owned by or rented to you.

Designated Person Or Organization

ALL ORGANIZATIONS TO WHOM YOU ARE REQUIRED BY WRITTEN CONTRACT, SIGNED PRIOR TO LOSS, TO WHICH THIS ENDORSEMENT APPLIED.

Liability Endorsement
(continued)

All other terms and conditions remain unchanged.

Authorized Representative

A handwritten signature in black ink, appearing to read "P. H. H. 2", is written over a horizontal line.

Policy Number
(11)7355-91-03

ENDORSEMENT

Named Insured NIXON PEABODY LLP

Effective Date:

12:01 A.M., Standard Time

Agent Name JOHN L WORTHAM & SON, L.P.

Agent No. 19931-999

BLANKET ADDITIONAL INSURED

ADDITIONAL INSURED

IT IS AGREED THE WHO IS INSURED PROVISION IS AMENDED TO INCLUDE THE
FOLLOWING:

D. ANYONE TO WHOM THE NAMED INSURED IS REQUIRED BY WRITTEN CONTRACT
TO PROVIDE ADDITIONAL INSURED COVERAGE, PROVIDED THAT THE CONTRACT
WAS SIGNED PRIOR TO AN OCCURRENCE, BUT ONLY WITH RESPECT TO YOUR USE
OF A COVERED "AUTO" YOU OWN, HIRE OR BORROW.

16-02-0252 (Ed. 1-01)

Liability Insurance

Endorsement

Policy Period

Effective Date

Policy Number 3583-82-19 HOU

Insured NIXON PEABODY LLP

Name of Company GREAT NORTHERN INSURANCE COMPANY

Date Issued

This Endorsement applies to the following forms:

GENERAL LIABILITY
EMPLOYEE BENEFITS ERRORS OR OMISSIONS
STOP GAP
STOP GAP - OHIO

Under Conditions, the following provision is added to the condition titled **Other Insurance**.

Conditions

**Other Insurance -
Primary, Noncontributory
Insurance - Scheduled
Person Or Organization**

If you are obligated, pursuant to a written contract or agreement, to provide the person or organization described in the Schedule (that is also included in the Who Is An Insured section of this contract) with primary insurance such as is afforded by this policy, then this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

PERSONS OR ORGANIZATIONS DESCRIBED IN THE WHO IS INSURED SECTION OF THIS CONTRACT AND THAT YOU ARE OBLIGATED, PURSUANT TO A WRITTEN CONTRACT OR AGREEMENT, TO PROVIDE WITH PRIMARY INSURANCE AS IS AFFORDED BY THIS POLICY, BUT ONLY TO THE MINIMUM EXTENT REQUIRED BY SUCH CONTRACT AGREEMENT.
COUNTY OF MONTEREY
OFFICE OF THE COUNTY COUNSEL
168 WEST ALISAL STREET, THIRD FLOOR
SALINA, CA 93901

Liability Insurance

Form 80-02-2653 (Rev. 7-09)

Conditions - Other Insurance - Primary, Noncontributory insurance - Scheduled Person Or Organization continued
Endorsement

Page 1

Liability Endorsement
(continued)

All other terms and conditions remain unchanged.

Authorized Representative

A handwritten signature in black ink, appearing to read "P. M. B.", is written over a horizontal line.

ALAS



ATTORNEYS' LIABILITY ASSURANCE SOCIETY, INC.,
A RISK RETENTION GROUP

January 2, 2013

Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604

To Whom It May Concern:

CONFIRMATION OF INSURANCE

We hereby confirm that Nixon Peabody has Professional Liability Coverage under Policy ALA#1039 with an annual limit of \$75,000,000 per claim and \$150,000,000 in the aggregate with the right, under stated conditions, to purchase extended reporting rights upon termination of such Policy by ALAS.

The self-insured retention under such Policy is \$1,500,000 each claim up to an aggregate of \$3,000,000 and \$100,000 each claim thereafter.

The Policy effective date is from January 1, 2013 to January 1, 2014.

Such Policy is subject to the terms, conditions, limitations and exclusions stated therein.

**ATTORNEYS' LIABILITY ASSURANCE SOCIETY, INC.,
A RISK RETENTION GROUP**

By: _____

Date: _____

1/2/13

Joseph R. Suster
Assistant Director of Underwriting

311 South Wacker Drive, Suite 5700
Chicago, IL 60606-6629

tel 312-697-6900 fax 312-697-6901 Web site alas.com