

MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING:	July, 27 2010	AGENDA NO.:
SUBJECT:	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Agreement with Latham & Watkins for Independent Consulting and Legal Services at NMC in an amount not to exceed \$100,000 for the period May 1, 2010 to April 30, 2011.	
DEPARTMENT:	Natividad Medical Center	

RECOMMENDATION:

It is recommended the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Agreement with Latham & Watkins for Independent Consulting and Legal Services at NMC in an amount not to exceed \$100,000 for the period May 1, 2010 to April 30, 2011.

SUMMARY/DISCUSSION:

Latham & Watkins healthcare and attorneys have specific experience with the nuanced regulations that govern the healthcare industries, including those related to Medicare/Medicaid reimbursement, healthcare regulatory requirements, Health Insurance Portability and Accountability Act (HIPAA), financing regulation, and licensing. In consultation with the Office of the County Counsel, Latham & Watkins shall render advice on a variety of healthcare-related issues to NMC

OTHER AGENCY INVOLVEMENT:

The Agreement has been reviewed and approved by County Counsel, the Auditor/Controller's office, and the Natividad Medical Center Board of Trustees.

FINANCING:

The cost of this Amendment is \$100,000 and is included in the Fiscal Year 2010/11 Approved Budget. This action will not require any additional General Fund subsidy.

Prepared by:
Stacy Saetta
Deputy County Counsel
July 14, 2010
Attachments: Agreement, Board Order

Harry Weis
Chief Executive Officer

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

Agreement No: A - 11791

Authorize the Purchasing Manager for Natividad Medical)
Center (NMC) to execute the Agreement with Latham &)
Watkins for Independent Consulting and Legal Services at)
NMC in an amount not to exceed \$100,000 for the period May)
1, 2010 to April 30, 2011.)

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

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute the Agreement with Latham & Watkins for Independent Consulting and Legal Services at NMC in an amount not to exceed \$100,000 for the period May 1, 2010 to April 30, 2011.

PASSED AND ADOPTED this 27th day of July, 2010, by the following vote, to wit:

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

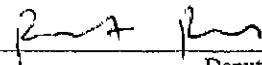
NOES: None

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 July 27, 2010.

Dated: July 29, 2010

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

By  Deputy

Jerry Peters
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LATHAM & WATKINS LLP

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Hamburg	San Diego
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Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

June 6, 2010

Ms. Stacy Saetta
Deputy County Counsel for the County of Monterey
Natividad Medical Center
1441 Constitution Boulevard
Salinas, CA 93906

Re: Engagement Letter

Dear Stacy:

We are pleased to welcome the County of Monterey (herein "Monterey County" or, in context, "you") as a client of Latham & Watkins LLP. This letter will confirm our discussions regarding Monterey County's engagement of our firm.

1. Legal Services.

You have asked us to represent Monterey County in connection with the analysis and potential negotiation of a physician agreements as well as other healthcare matters regarding Natividad Medical Center ("Natividad"), a general acute care teaching hospital owned and operated by Monterey County and located in Salinas, California.

If additional services are requested by you and agreed to by us, this letter will apply to such services, unless superseded by another written agreement. Our representation is limited to the specific services that you request and that we have agreed to undertake.

Please feel free to contact me at (415) 395-8160 or Betty Pang at (415) 395-8130 with any questions as this engagement proceeds.

2. Identity of the Client.

Our client in this matter will be Monterey County. We do not represent and will not be deemed to have an attorney-client relationship with any other organization or person. I understand that County Counsel Charles McKee, you, and Deputy County Counsel William Litt will be our primary contacts, and will direct our actions on behalf of Monterey County.

3. Roles of Attorney and Client.

Our responsibilities under this agreement are to provide legal counsel and assistance to you in accordance with this letter, and to provide statements to you that clearly state the basis for our fees and charges. We will not disclose any confidential information of yours to any other

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client, even where that information might have some bearing on their interests. Likewise, we will not disclose the confidences of any other client to you, even where that information might have some bearing on your interests, and you agree that we are under no obligation to do so. We shall provide to Monterey County such reports as may be requested by the Board of Supervisors or County Counsel. You also agree to keep us informed of developments related to this representation and to pay our statements in a timely manner. To allow us to conduct a conflicts check, you represent that you have identified to us all persons and entities that are or may become involved in this matter, including all such persons or entities that are affiliated with you. You also agree to notify us if you become aware of any other persons or entities that are or may become involved in this matter.

During the course of this engagement, we may express opinions or beliefs to you about the effectiveness of various courses of action or about the results that might be anticipated. Such statements are expressions of opinion only, and should not be construed as promises or guaranties.

Please also be aware that Latham & Watkins LLP has internal ethics and professional responsibility counsel, who advise Latham attorneys regarding their ethical, professional and legal duties. From time to time, the attorneys working on your matter may consult these lawyers. You acknowledge that any such consultation is protected by Latham's own attorney-client privilege, and you waive any right to discovery of those communications. Should circumstances arise in which Latham & Watkins LLP faces a conflict of interest with respect to or by virtue of these communications, you agree to waive that conflict. You also agree that such communications are property of the firm and are not part of the Client File as defined in Section 4 of this letter.

4. Client Files and Retention.

In the course of your representation, we shall maintain a file in which we may place correspondence, agreements, governmental filings, prospectuses, disclosures, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to your representation ("Client File"). The Client File shall be and remain your property. Upon completion of a specific project, your original Client File for that project shall be available to be taken by you. We will be entitled to make copies if we choose. You also agree at the conclusion of the project (whether or not you take possession of the Client File) to take possession of any and all original contracts, wills, stock certificates, and other such important documents that may be in the Client File and we shall have no further responsibility with regard to such documents. If you do not take possession of the Client File at the conclusion of the project, we will store such file for you for a period of seven years. If you do not take possession of the Client File during such seven-year storage period, you agree that we may dispose of it. You agree that the documents containing our attorney work product, mental impressions or notes and drafts of documents shall be and remain our property and shall not be considered part of your Client File. In addition, electronic documents such as e-mail and documents prepared on our word processing system (but excluding printed copies thereof), and databases shall be and remain our property and shall not be considered part of your Client File. You agree that we may enact and implement reasonable retention policies for such electronic documents and that our firm has discretion to delete such documents.

5. Conflicts of Interest.

Latham represents a few clients who are adverse to the County of Monterey on matters unrelated to this matter. I am informed that there are potentially three such clients. Latham

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represents Defendant Deloitte in the County Treasurer's securities lawsuit against Washington Mutual. Latham also represents the Pebble Beach Company in various matters that might involve the County. Latham filed an Amicus Brief on behalf of The Irvine Company to California Supreme Court on use of contingent fee lawyers in groundwater toxic torts brought by water districts, which may include the County. Finally, Latham represented a party in a public records act request in 2006. By executing this letter agreement, you consent to our continued representation regarding those matters, none of which involve Natividad.

Without your consent, we will not represent any other party in this matter, nor any other matter substantially related to it. You will have our complete loyalty with respect to this matter.

We note that Latham & Watkins LLP is an international law firm with numerous attorneys and offices in many countries and that we practice in many diverse areas of law. Some of our clients may now or in the future operate in the same lines of business as you do. Both our own prudent business conduct, and the interests of our other clients, call for us to seek to retain the ability to take unrelated matters for all of our clients. We thus ask you in connection with this engagement to consent in advance to our acceptance of future matters (including litigation matters) adverse to Monterey County, provided that those matters do not involve litigation against Monterey County concerning Natividad and are not substantially related to the work that we have done for Natividad. By entering into this agreement, you consent to such adverse representations. Thus, for example, you agree that we would be able to take a new lawsuit or transactional matter for any client, adverse to Monterey County, at the same time that we are representing Monterey County in this matter, so long as the adverse matter does not involve litigation against Monterey County concerning Natividad and is not substantially related to the work we have done for Natividad. This consent also includes being adverse to you in any bankruptcy, regulatory, administrative, legislative or rulemaking proceeding. A matter shall not be construed as "substantially related to the work we have done for Natividad" if it entails merely advising a client that does business with Natividad regarding routine transactional issues applicable to hospitals generally.

In addition, by entering into this agreement you agree that if we represent you in a matter across from another person or entity, we may represent such person or entity on matters that do not involve litigation against Monterey County concerning Natividad and are not substantially related to our work for Natividad. We agree to inform Monterey County, through timely notification of the County Counsel, of any new actual legal conflicts that arise with respect to Monterey County during the pendency of our representation of Monterey County, subject to our professional obligations under applicable ethics rules.

Because you are consenting only to our taking adverse matters not involving litigation against Monterey County concerning Natividad and not substantially unrelated to anything we have handled for Natividad, we will not have obtained any confidential information from Monterey County that would be pertinent to any matter on which we will be representing these other clients. Nevertheless, we take very seriously our obligations to maintain the confidentiality of information we receive from all of our clients, including Monterey County and any other clients covered by this consent. Accordingly, we will continue to maintain the confidences of both Monterey County and our other clients.

You should feel completely free to consult other counsel concerning these matters and we encourage you to do so. By signing this letter, you acknowledge that you have had an opportunity to consult with other counsel.

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6. Rates, Fees and Charges.

Our fees are based primarily on the amount of time spent by our lawyers, paralegals and other professionals on your behalf. Each lawyer, paralegal and other professional assigned to this matter will have individual hourly billing rates, and the applicable rate multiplied by the number of hours spent, measured in tenths of an hour, will be the initial basis for determining our fee.

My 2010 billing rate is \$780 per hour. I anticipate performing most of this initial assignment myself, but might utilize an associate at a lower billing rate to reduce the cost of this project if appropriate. In general, our attorneys' billing rates applicable to this engagement will range from \$295 per hour to \$900 per hour during 2010, depending upon the seniority and expertise of the attorney involved. For paralegal and other professional time, our rates will range from \$115 to \$555 per hour.

In addition to fees, you agree to pay for disbursements and other charges. These will include such items as photocopying (\$0.17 per page); color prints/copies (\$0.25 per page); scanning documents (\$0.15 per page); use of fee-based research databases (90% of the third-party vendor rate or 1.25 times our volume-discounted cost depending on vendor); long-distance telephone charges (AT&T standard rates); couriers and air freight (1.10 times our volume-discounted cost); messengers (at third-party vendor rate); client-specific work by staff; staff overtime and meals (as defined by federal or local law); transportation (where dictated by safety reasons, and which may include a transaction fee); word processing (\$60.00 per hour); postage, at cost; supplies (for large volume only); and other reasonable costs and expenses. For disbursements over \$1,500, we may ask that billings be sent directly to you or that advances be provided. Travel and lodging expenses shall be paid in accordance with the County's Travel Policy, which you shall provide to me.

The term of this Agreement is from May 1, 2010 to April 30, 2011. The maximum amount of the County's liability over the full term of this Agreement is \$100,000. This amount may be amended by written agreement between the parties, or this Agreement may be terminated by either party if the maximum is reached and not increased by the County.

We intend to provide statements to you on a monthly basis. They will show our time logged in tenth-of-an-hour increments and will separate fees from disbursements and other charges. Latham shall submit an invoice to Monterey County no later than 45 days following the last day of the month of service. Invoices shall be submitted to:

Stacy L. Sietta
Deputy County Counsel
County Counsel's Office
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

Latham shall provide Monterey 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 Monterey County's retainer remaining in its trust account or the amount owing to Latham. Natividad's 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 the invoice to the County Auditor-Controller for

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payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

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

Our billing rates and charges are usually revised annually, but we reserve the right to revise them at other times. Following any such revision, our new rates and charges will be applied to your account, and this letter constitutes written notice to you of our right to make such revisions.

Any funds that you deposit with us as an advance against our fees and charges will be treated as property of the firm. Any unused portion of such advance after our services are concluded will be returned to you.

From time to time, you may request estimates of the fees and charges that we anticipate incurring on your behalf. These estimates are subject to unforeseen circumstances and are by their nature inexact. While we may provide estimates for your general planning purposes, such estimates are subordinate to our regular billing procedures, absent an express written agreement to the contrary.

We agree to inform Monterey County, through timely notification of the County Counsel, of when our fees and charges have reached monetary milestones of \$25,000, \$50,000, \$75,000, and \$100,000 and of our plan either to terminate this Agreement without completing the scope of work or to complete the scope of work within the not to exceed amount of the contract.

Contact Information

CONTRACTOR:

Jerry Peters, Esq.
Latham & Watkins, LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
(415) 395-8160

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
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(831) 755-5045

William M. Litt
Deputy County Counsel
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Salinas, CA 93901
(831) 755-5045

NATIVIDAD MEDICAL CENTER

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

7. Arbitration of Disputes.

Any controversy or claim, whether in tort, contract or otherwise, arising out of or relating to the relationship between Monterey County, its affiliates or successors (the "Client Arbitration Parties") and Latham & Watkins LLP, its affiliated partnerships, attorneys or staff or any of their successors (the "Latham Arbitration Parties") or the services provided by the Latham Arbitration Parties pursuant to this engagement letter or otherwise to the Client Arbitration Parties shall be submitted to binding arbitration. By agreeing to arbitrate, you are agreeing to waive your right to a jury trial. ~~The arbitration will be conducted in accordance with this document, the Federal Arbitration Act and CPR Rules for Non-Administered Arbitration, as in effect on the date of this engagement letter. The arbitration shall be conducted before a panel of three neutral arbitrators. The arbitration shall be commenced and held in the city and state in which the Latham & Watkins office is located whose attorneys spent the most amount of time on the matter in dispute. Any issue concerning the location of the arbitration, the extent to which any dispute is subject to arbitration, the applicability, interpretation, or enforceability of this agreement shall be resolved by all of the arbitrators. To the extent state law is applicable, the arbitrators shall apply the substantive law of the state in which the Latham & Watkins office is located whose attorneys spent the most amount of time on the matter in dispute. Each party will be entitled to depose a maximum of six witnesses, plus all experts designated to be witnesses at the arbitration. The depositions shall be limited to a maximum of six hours per deposition. All aspects of the arbitration shall be treated as confidential and neither the parties nor the arbitrators may disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. The result of the arbitration shall be binding on the parties and judgment on the arbitrators' award may be entered in any court having jurisdiction.~~

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8. Limited Liability Partnership.

Latham & Watkins LLP is a limited liability partnership (LLP). Similar to the corporate form of business organization, the LLP form generally limits the liability of the individual partners of the firm to the capital they have invested in the firm for claims arising from services performed by the firm. Our form of organization as an LLP will not diminish the ability to recover damages from the firm or from any individuals who directly caused the loss.

Because of legal restrictions in those countries, work done out of our offices in England, France, Hong Kong, Japan, and Italy will be carried out through affiliated partnerships registered locally, but the distinction will be largely transparent to you as a client.

9. Indemnification and Insurance.

9.1. Indemnification.

Indemnification for Professional Liability. For liability arising from professional and technical services provided under this Agreement, Latham 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 Latham, its employees, sub-consultants, or agents.

General Indemnification. For any liability, other than arising out of professional and technical services, Latham 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 Latham, its employees, sub-consultants, or agents, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of the County.

Notwithstanding the foregoing two paragraphs, Latham's contract indemnity obligation shall be limited to the specified minimum indemnity amount for which Latham is required to be insured in Section 9.2 of the Agreement. Nothing in this Section 9 shall be construed to or shall expand the responsibility or potential liability of Latham beyond that which may already exist under the common or statutory law. Latham shall have the right in its sole discretion to choose defense counsel and make all decisions regarding defense and settlement, including the amount and whether to settle. Payment of defense counsel shall be limited to reasonable costs and fees.

9.2 Insurance. Latham certifies that it maintains a program of insurance and/or self-insurance that covers its activities in connection with this engagement as follows:

(1) Professional Liability Insurance. Latham shall have coverage for professional liability in the amount not less than \$3,000,000 per claim and \$5,000,000 in the aggregate, to cover liability for malpractice or errors and omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made"

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basis, such coverage shall continue for at least three (3) years following the expiration or earlier termination of this Agreement;

(2) Commercial General Liability Insurance. Latham shall have coverage for commercial general liability, including but not limited to premises, personal injuries, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence;

(3) Automobile Liability Insurance. Latham shall have coverage for automobile liability, including but not limited to comprehensive automobile liability covering all motor vehicles, including owned, leased, nonowned, and hired vehicles, used in providing services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence;

(4) Workers' Compensation Insurance: If Latham employs others in the performance of this Agreement, Latham shall have coverage for workers' compensation in accordance with California Labor Code § 3700 and with a minimum of \$1,000,000 per occurrence for employer's liability; and

(5) Such other and further insurance as may be required by law and identified in advance by you to me.

9.3 Other Insurance Requirements. All insurance required by this Agreement shall be self-insured or with a company acceptable to the County and authorized by law 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 two (2) years following the date Latham completes its performance of services under this Agreement or covered by Latham's self-insurance program.

Commercial general liability and automobile liability self-insurance policies shall provide an endorsement naming the County of Monterey, its governing board, officers, agents, and employees as Additional Insureds and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by Monterey County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by Monterey County's insurance.

10. Entire Agreement and Miscellaneous.

You and we understand that this letter constitutes the entire agreement pertaining to the engagement of Latham & Watkins LLP, and that it shall not be modified by any policies, procedures, guidelines or correspondence from you or your representative unless agreed to in writing by Latham & Watkins LLP

Our relationship with you will be deemed concluded when we have completed our services. In addition, and without limiting the preceding sentence, in the event we have performed no work on your behalf for six consecutive months, you agree that our attorney-client relationship with you will have been terminated.

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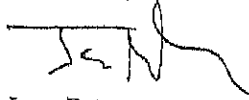
11. Limitations on law applicability.

Latham and Monterey County agree that this Agreement is not intended to subject Latham to the requirements of the California Public Records Act, or the open meeting, notice, and other requirements of the California Open Meetings Law (Brown Act), or other similar statutes applicable to state or local agencies to any greater extent than required by law. Latham and Monterey County further agree that this Agreement shall not subject Latham to Monterey County's internal policies and procedures except as set forth specifically in this Agreement.

12. Approval and Return of Letter.

If this letter meets with your approval, please sign and return the enclosed copy. We look forward to working with you.

Very truly yours,

A handwritten signature in black ink, appearing to read "JP", with a horizontal line drawn above it.

Jerry Peters
of LATHAM & WATKINS LLP

LATHAM & WATKINS LLP

Approval of Engagement

Natividad has read the enclosed letter and agrees to its terms, effective as of the date on which Latham & Watkins LLP first provided services to the County of Monterey.

BY SIGNING THIS LETTER, THE COUNTY OF MONTEREY AGREES TO HAVE ANY ISSUE ARISING OUT OF OR RELATING TO THE SERVICES OF THE LATHAM ARBITRATION PARTIES (INCLUDING ANY CLAIM FOR PROFESSIONAL LIABILITY) DECIDED IN ARBITRATION AND THE COUNTY OF MONTEREY GIVES UP ITS RIGHT TO A JURY OR COURT TRIAL AND ACKNOWLEDGES THE ARBITRATION PROVISION IN SECTION 7 ABOVE.

Date: _____, 2010.

The County of Monterey,

By: _____
Charles McKee
County Counsel for the County of
Monterey, California