

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN Marci Bracco Cain AND
THE NATIVIDAD MEDICAL CENTER
FOR
Marketing & Public Relations Consulting Services**

This Amendment No. 2 to Professional Services Agreement ("Agreement"), dated January 1, 2012, is entered into by and between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Marci Bracco Cain (Contractor), with respect to the following:

RECITALS

WHEREAS, the County and Contractor amended the Agreement previously on January 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; and

WHEREAS, the County and Contractor wish to amend the Agreement to increase the amount of the Agreement because of the term extension and the amount payable for services rendered.

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. MYA221).
2. Section 1. "PAYMENTS BY NMC" shall be amended by removing, "*The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$100,000.*" and replacing it with "*The total amount payable by County to CONTRACTOR under Agreement No. (MYA221) shall not exceed the total sum of \$200,000 for the full term of the Agreement*".
3. Section 2. "TERM OF AGREEMENT" shall be amended by removing, "*The term of this Agreement is from January 1, 2012 to December 31, 2012 unless sooner terminated pursuant to this Agreement*" and replacing it with "*The term of this Agreement is January 1, 2012 to June 30, 2014 unless sooner terminated pursuant to this Agreement*".
4. Except as provided herein, all remaining terms, conditions and provisions of the Agreement and Amendment No. 1 are unchanged and unaffected by this Amendment No. 2 and shall continue in full force and effect as set forth in the Agreement.
5. A copy of this Amendment No. 2 and all previous amendments shall be attached to the original Agreement (No. MYA221).
6. The effective date of this Amendment is July 1, 2013.

IN WITNESS WHEREOF, the parties hereto are in agreement with this Amendment on the basis set forth in this document and have executed this Amendment on the day and year set forth herein.

Natividad Medical Center

By: _____
Sid Cato, NMC Contracts Manager

Date: _____

By:  _____
Harry Weis, NMC Chief Executive Officer

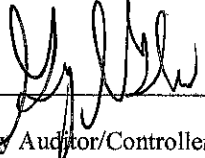
Date: 4/25/13

APPROVED AS TO LEGAL PROVISIONS

By:  _____
Anne Brauer
Monterey County, Deputy County Counsel

Date: May 6, 2013

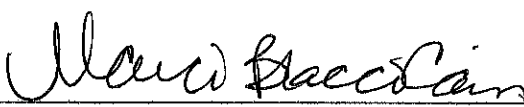
APPROVED AS TO FISCAL PROVISIONS

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

Date: 5-6-13

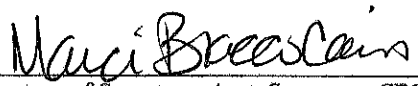
Contractor

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

 _____
Signature of Chair, President, or Vice-President

owner, Marci Bracco Cain
Name and Title

Date: 4.25.13

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

 _____
Name and Title owner

Date: 4.25.13

***Instructions
If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).
If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).
If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required)

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN Marcie Bracco Cain AND
THE NATIVIDAD MEDICAL CENTER
FOR
Marketing & Public Relations Consulting Services**

This Amendment No. 1 to Professional Services Agreement ("Agreement"), dated January 1, 2012, is entered into by and between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Marcie Bracco Cain (Contractor), with respect to the following:

RECITALS

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. MYA 221).
2. Section 2. "TERM OF AGREEMENT" shall be amended by removing, "*The term of this Agreement is from January 1, 2012 to December 31, 2012 unless sooner terminated pursuant to this Agreement*" and replacing it with "*The term of this Agreement is from January 1, 2012 to June 30, 2013 unless sooner terminated pursuant to this Agreement.*"
3. A copy of this Amendment shall be attached to the original Agreement (No. MYA 221).
4. The effective date of this Amendment is January 1, 2012.

Signature Page to Follow

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.

CONTRACTOR

Signature 1 Marci Cain
(Signature of Chair, President, or Vice-President)***

Dated 10.26.12

Printed Name Marci Cain

Title Independent Contractor
Chatterbox PR

Signature 2 _____
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer) ***

Dated _____

Printed Name _____

Title _____

***INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement.

NATIVIDAD MEDICAL CENTER

Signature [Signature]
Purchasing Manager

Dated 12-26-12

Signature [Signature]
NMC - CEO

Dated 11/14/12

Approved as to Legality and Legal Form:

Charles J. McKee, County Counsel

By [Signature]
Anne Brauer, Deputy Attorney for County and NMC

Dated: Dec 6, 2012

By [Signature]
Gary Giboney, Monterey County Auditor/Controller's Office

Dated: 12-7, 2012



Natividad MEDICAL CENTER

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

This Professional Services Agreement (hereinafter "Agreement") is made by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California and Marcie Bracco Cain

hereinafter "CONTRACTOR").

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

SERVICES TO BE PROVIDED. NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of the Agreement. The services are generally described as follows: Marketing and Public Relations Consulting Services

1. **PAYMENTS BY NMC.** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$100,000

2. **TERM OF AGREEMENT.** The term of this Agreement is from Jan 1, 2012 to Dec 31, 2012 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

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

Exhibit A/Schedule A: Scope of Services/Payment Provisions

4. **PERFORMANCE STANDARDS.**

4.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC,

4.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

4.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

5. PAYMENT CONDITIONS.

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

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

6. TERMINATION.

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

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

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

8. INSURANCE.

8.1. Evidence of Coverage:

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements

executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 8.2. 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 that A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.
- 8.3. Insurance Coverage Requirements: Without limiting Contractor's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

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

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

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

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

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

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

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

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

8.4. Other Insurance Requirements:

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

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

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement from 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 from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

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

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

9. RECORDS AND CONFIDENTIALITY.

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

confidential records or information, CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.

- 9.2. NMC Records . When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.
- 9.3. Maintenance of Records . CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 9.4. Access to and Audit of Records . NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 9.5. Royalties and Inventions . NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.
10. **NON-DISCRIMINATION**. During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
11. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT**. If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.
12. **INDEPENDENT CONTRACTOR**. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled

by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for an obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

13. NOTICES. Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

<p>FOR NATIVIDAD MEDICAL CENTER: Contracts/Purchasing Manager</p> <hr/> <p style="text-align: center;">Name</p> <hr/> <p>1441 Constitution Blvd. Salinas, CA. 93906</p> <p style="text-align: center;">Address</p> <hr/> <p style="text-align: center;">831.755.4111</p> <p style="text-align: center;">Phone</p>	<p style="text-align: center;">FOR CONTRACTOR:</p> <p style="text-align: center;"><i>Mardi Cain</i></p> <hr/> <p style="text-align: center;">Name and Title</p> <hr/> <p style="text-align: center;"><i>230 Rang Drive</i></p> <p style="text-align: center;">Address</p> <hr/> <p style="text-align: center;"><i>Salinas, Calif. 93901</i></p> <p style="text-align: center;">Phone</p>
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14. MISCELLANEOUS PROVISIONS.

(831) 742 7455

- 14.1. Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 14.2. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 14.3. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 14.4. Contractor. The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 14.5. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 14.6. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of

NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 14.7. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 14.8. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 14.9. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 14.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement
- 14.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 14.12. Non-exclusive Agreement. This Agreement is non-exclusive and both NMC and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 14.13. Construction of Agreement. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 14.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 14.15. Integration. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, Representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 14.16. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

NATIVIDAD MEDICAL CENTER

By: Em L Gray
NMC Contracts/Purchasing Agent

Date: 10-27-11

By: [Signature]
Department Head (if applicable)

Date: 10/18/11

Approved as to Legal Form

By: Stacy Saetta
Stacy Saetta
Deputy County Counsel

Date: 10/25/11

Approved as to Fiscal Provisions

By: [Signature]
Auditor/Controller

Date: 10/26/11

CONTRACTOR

Marci Cain
Contractor's Business Name***

Marci Cain
Signature of Chair, President, or Vice-President

Marci Cain / Contractor
Name and Title

Date: 9.24.11

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

Marci Cain
Name and Title

Date: 9.24.11

***INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement.

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

The Professional Services Agreement between Natividad Medical Center and Marci Bracco Cain ("Contractor") is modified as follows:

Section 4.3 (after the first sentence): Contractor shall be responsible for all costs and expenses incidental to the performance of services, including, but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor including, but not limited to, corporate income tax, sales and excise taxes or amounts levied thereof, and all other of Contractor's costs of doing business.

Section 5 - add the following sections:

Section 5.3: Performance Requirements. The services must be performed in full compliance at all times with the requirements of this Agreement and to the satisfaction of NMC.

Section 5.4: Contractor Staff Approval. NMC shall have the right to disapprove of any member of Contractor's staff assigned to perform services under this Agreement.

Section 12 - add the following sections:

Section 12.1: Employment Related Claims. Contractor agrees that it shall be solely responsible for the direction, supervision, counseling and discipline of its employees, including the conducting of informal and formal performance evaluations. Contractor agrees to be solely responsible for all matters relating to compensation of its employees, subcontractors, agents, partners or consultants including but not limited to compliance with federal and state and local wage and hours laws, laws governing workers' compensation, Social Security, lay-off or termination compensation, withholding and payment of any and all federal, state and local personal income taxes, disability/death insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits. At Contractor's expense as described herein, Contractor agrees to defend, indemnify, and hold harmless NMC, its officers, agents, employees, members, subsidiaries, parent, affiliates, and successors in interest from and against any claim, demand, action, proceeding, threatened or actual, judgment, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees as provided herein arising out of Contractor's or NMC's alleged failure to pay, when due, all such compensation, premiums, taxes and obligations and including any claim of whatever nature brought by any employee of Contractor or applicant for employment, arising out of the hiring, or failure to hire the employee/applicant, or arising out of any aspect of his/her employment by Contractor and the termination thereof (collectively referred to for purposes of this Section as "Employment Claim(s)"). Contractor shall pay to NMC any expenses or charges relating to or arising from any such Employment Claim(s) as they are incurred by NMC.

Section 12.2: Common-Law Employees. The foregoing shall apply to Contractor and Contractor's employees and agents even if Contractor or any of Contractor's employees or agents are subsequently reclassified by any court or governmental agency as a common-law employee for periods during which services were performed under this Agreement.

Section 14.7 - add the following prior to the last sentence:

Any purported assignment or delegation not consented to by NMC shall be void at NMC's option and shall constitute a material breach of this Agreement.

Section 14.17 - add this section:

Authority. Contractor has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, and Contractor's performance of this Agreement does not violate or conflict with any agreement to which Contractor is a party. Contractor further represents that there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement.



chatterbox

Chatterbox is a marketing and public relations firm specializing in building and creating brands. Chatterbox focuses on the unique qualities of a company, organization, product or service and the characteristics of the defined audience. The Chatterbox team strives to differentiate clients from their competitors and develop a distinct brand identity.

Combining proven creative excellence with solid marketing and public relations strategic plans, we help clients succeed in a competitive and often crowded marketplace.

For years, Chatterbox has been serving clients in such diverse industries as: agriculture, art, writing, food and wine, health care, legal, nonprofit, professional services, real estate, retail, tourism and more.

Service areas for Natividad Medical Center include:

- Strategic Planning
- Brand Experience
- Consumer Marketing
- Marketing Plan Development and Execution
- Public Relations
- Event Planning
- Copywriting
- Social Media

Hourly rate of \$75.00.

Chatterbox tells your story through a wide variety of traditional and nontraditional media channels to achieve results you want. Chatterbox creates integrated solutions that deliver what clients value most: meaningful, positive and measurable impact on the performance of their organizations. You know what you want to achieve with your business and what success means to you.

At Chatterbox, we think a little more deeply and respond more inventively than your average marketing agency. That's because we know people. Not just from a marketing standpoint, but from a human one, too. Our capabilities reflect our understanding of what works for whom—and when and where. Let Chatterbox help you put into place a plan on how to achieve your desired results.

Let The Chatter Begin!

COUNTY OF MONTEREY

DETERMINATION OF
CONTRACTOR'S STATUS FORM

Department: Administration

Contact: Carol Adams
Title: Assistant Administrator
Phone: (831) 755-4175

Contractor: ~~Shelley~~
Marci Bracco Cain

Contact: Marci Bracco Cain
Title: PRESIDENT
Phone: (831) 747-7455

Brief description of contract work: Public Relations / Marketing Consultation

Purpose of Form:

The purpose of this form is to determine for each proposed agreement or contract with a provider of services, the exact nature of the relationship between the contractor and the County.

Department Certification:

I certify that the contractor providing these services is (1) a non-profit organization, a partnership or a corporation, and (2) has two or more employees, and (3) the services of a specific individual are not required to fulfill the contract. Therefore, an employment tax status questionnaire is not required.

Date: _____

Department Representative

Title

I hereby certify that the answers to the following questions in the attached employment tax status questionnaire accurately reflect the anticipated working relationship for this contract. After reviewing the completed questionnaire, I have determined that:

Under the IRS/EDD rules, an employment relationship exists;

OR

Contractor is properly classified an independent contractor.

Score: 28 (out of possible 88 points (IC))

Date: 10/21/11

[Signature]

Department Representative
Assistant Administrator

Title

25 QUESTIONS:

County of Monterey

Employment Tax Status Questionnaire

Determination of Employment Tax Status of Contractor

INSTRUCTIONS: This questionnaire is required as part of each new, renewed, or amended services contract. It must be filled in by the requesting department and approved by the Contracts/Purchasing Officer prior to contract approval as to form by the County Counsel's Office, or execution of a Purchase Order contract by the Purchasing Manager. If upon review, the Purchasing Manager or the Auditor-Controller's Office determines that the worker is in fact an employee, they will notify the Department and instruct them to contact Human Resources in order to resolve this issue.

The questionnaire should be completed for all contractors who perform professional/personal services for the County with the following exception: If the contractor providing these services is (1) a non-profit organization, a partnership or a corporation, and (2) has two or more employees, and (3) the services of a specific individual are not required to fulfill the contract, the related questionnaire is not required. If exception applies, check the corresponding box, sign where indicated and do not complete the questionnaire. Please attach the Guidelines for Determination of Contractor's Status cover sheet to the contract to indicate that you have addressed this issue.

In answering the questions, remember that the IRS and EDD are more concerned about the substance of the agreement than its written form. Answer all questions based on the Department's expectations for the working relationship with the contractor, regardless of the language in the proposed contract.

The IRS and EDD state that employee status exists when the County has the right to control and direct the details and means for rendering contractual services. It is the ability to control the manner in which contract services are performed which is important, even if the County does not choose to exercise it.

The following questions are intended to indicate whether sufficient County control of the details and means for rendering contractual services is present to indicate that an employment relationship exists under IRS/EDD rules. The determination is based on all the facts of each case. The fact that the County has other valid business reasons for contracting for the services is NOT relevant. The IRS and EDD are not concerned with other reasons for entering into a contractual relationship if the listed factors tend to indicate that an employment relationship exists under IRS/EDD rules. Remember that other business reasons for contracting for these services, however valid, will not influence the IRS or EDD if it reviews the decision.

After completing the questionnaire, review your responses: Wherever an "(IC)" appears after a response, the answer tends to indicate independent contractor status. Your determination of tax withholding status will be based on the overall score of all factors. We have weighted the value of each factor by assigning a point value, the total of which is 83. A few factors (as noted in the comments following each factor) are considered more important than others and are weighted accordingly. Please score your questionnaire by adding the points for those factors for which the answers indicate independent contractor status (i.e., "(IC)"). If your score is 21 or greater, then the completed questionnaire indicates independent contractor status. If your score is 20 or less, the questionnaire should be reviewed closely as this indicates "employee" status.

If the status of the contractor is unclear after reviewing this questionnaire, contact the Auditor-Controller's Office for assistance in making the determination.

Departments are encouraged to discuss the need for each professional/personal services agreement with the Personnel Division at the earliest possible point in time, in order to determine the appropriate means for obtaining the services sought.

If the questionnaire determines that an employment relationship exists, and if the contractor disagrees with this determination, the contractor may elect to submit a Form #SS-8 to the IRS. The IRS will then review the facts and determine the proper employment tax status. If any payments become due before the County is notified of the IRS determination, the individual will be deemed to be an employee and withholding deductions will be made from those payments, pending notification of the determination.

If you have determined that under IRS/EDD rules, an employment relationship exists, the use of an independent contractor for rendering this professional/personal service will not be allowed unless the IRS reviews the Form #SS-8 and determines that the individual is an independent contractor.

Section I - Contractor Information	
<p>1. What is the legal status of the contractor?</p> <p>If the expectation of the Department is that a particular individual will perform the work personally as opposed to having his/her partner or employees do the work, we are really contracting with an individual, and the contract should be written to reflect this relationship.</p>	<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Incorporated <input type="checkbox"/> Other
<p>2. What is the contractor's Social Security Number (SSN) or Taxpayer Identification Number (TIN)?</p> <p>Possession of a TIN does not necessarily mean that a contractor is a partnership or corporation. It may only mean that the contractor has or has had employees.</p> <p>If an individual owns a business as a sole proprietor, the contract must be either with the individual or with the individual "doing business as" the firm name. Regardless of tax status, payments must be made to the individual and reported to the IRS using the individual's Social Security Number (not the Taxpayer Identification Number).</p>	SSN <u>54 65 1375</u> TIN _____
Section II - What is the nature of the work?	
<p>3. Are personal services of the contractor required?</p> <p>If the expectation of the Department is that a particular individual will perform the work personally as opposed to having his/her partner or employees do the work, the answer is yes. This is a strong indicator that the contractor should be treated as an employee for employment tax purposes.</p> <p>If the contractor has the right to substitute other workers without prior permission from the County, the answer is no. This is a strong indicator that the contractor is an independent contractor.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 2 pts
<p>4. Has the contractor been employed by the County to perform similar services?</p> <p>If the contractor is a current or former employee of the County and work done as an employee was similar to, even if not identical to, the contract services, the answer is yes.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt

<p>5. Do County employees perform similar work?</p> <p>If the contract work is similar to work done (now or in the past) by County employees, the answer is yes.</p> <p>If the contractor is doing work created by a vacant County position, extended leaves, or layoffs, the answer is yes.</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (IC) 2 pts</p>
<p>6. Are the contract services similar in nature to the normal operations of the department?</p> <p>An employee's services are usually integrated into the employer's operations. An independent contractor's services are not usually related to the employer's normal operations.</p> <p>The more integrated the contractor is with the normal operations of the County, the more likely the IRS would consider the contractor an employee.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 2 pts</p>

Section III: Does the contractor operate a business?

<p>7. Does contractor offer services to the general public?</p> <p>Offering services to the general public is a strong indicator of independent contractor status.</p> <p>For a small practitioner, consider the presence or absence of signs such as listings in the yellow pages, other advertising, and the presence of business facilities such as office, clinic, or stores open to others.</p>	<p><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (IC) 2 pts</p>
<p>8. Does the contractor work for others?</p> <p>If the contractor works only for the County, the answer is no.</p> <p>If the contractor works for others, but only for one firm at a time, the answer is no.</p>	<p><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (IC) 1 pt</p>
<p>9. Does the contractor have a risk of loss?</p> <p>If the contractor's business incurs revenues and expenses such that it could result in either profits or losses, the answer is yes.</p> <p>If the contractor's business is primarily providing services to the County and the contractor has no significant business expenses, the answer is no.</p>	<p><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (IC) 1 pt</p>
<p>10. Does the contractor have a significant investment in his/her business?</p> <p>If the contractor's business has offices, stores, clinics, etc. that are furnished and equipped by the business (not by the County) the answer is probably yes.</p> <p>If the contractor provides his/her own tools or other equipment, the answer is probably yes.</p> <p>If the contractor normally incurs regular business expenses such as rent, depreciation, and liability insurance, the answer is probably yes.</p> <p>Note that investment in education is not considered in this factor.</p>	<p><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (IC) 2 pts</p>

Section IV: What control does the County have over work performed?	
<p>11. Does the County have the right to control the way in which the work will be done?</p> <p>If the contractor is subject to possible County control over methods and procedures, even if the control is not exercised, the answer is yes. This right to control is considered a very strong indicator that the contractor is an employee for employment tax purposes.</p> <p>If the County can only ensure that a result conforms to the agreed-upon contract specifications and cannot control how the result is achieved, the answer is no.</p> <p>If the County can specify the sequence of steps or the methods and procedures to be used to generate results, the answer is yes.</p> <p>If the County can direct the contractor to do a variety of jobs that differ from the primary activity, the answer is probably yes.</p>	<p>Yes <input checked="" type="checkbox"/> No (IC) 3 pts</p>
<p>12. Will the contract work be done on County premises?</p> <p>Working on site in County facilities (whether owned, leased, or otherwise operated by the County) is indicative of employee status.</p>	<p>Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>
<p>13. Will the County control when the contractor will work?</p> <p>If the contractor is expected to work specific hours, whether itemized in the contract or not, the answer is yes.</p>	<p>Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>
<p>14. Will the County provide staff support to the contractor (includes clerical, technical, professional, or similar help)?</p> <p>If the contractor hires his/her own assistants and pays them from his/her own resources, the answer is no.</p> <p>An independent contractor should perform all duties required of the job from beginning to end without any direction or assistance from the County. Integration of the contractor into the County's operations could create a level of control over the contractor's performance, which is indicative of an employer/employee relationship. If County employees do typing, develop forms, write computer programs, or provide other similar assistance to the contractor, the answer is yes.</p>	<p>Yes <input checked="" type="checkbox"/> No (IC) 2 pts</p>
<p>15. Will the County provide or pay for training for the contractor?</p> <p>If the County provides internal training other than rudimentary orientation, the answer is probably yes.</p> <p>If the County pays for external training such as seminars, college courses, or conferences, which will teach the contractor how to perform the contracted services, the answer is yes.</p> <p>Seminars or conferences which are attended on behalf of the County or which will enhance the contractor's performance are NOT considered "how-to" training.</p>	<p>Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>

<p>16. Will the contractor provide training or supervision to County employees?</p> <p>If the contractor is providing routine supervision to County employees, the answer is yes.</p> <p>If County employees report to the contractor, the answer is yes.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>
<p>17. Will the contractor be responsible for making decisions to hire or fire County employees?</p> <p>If the contractor has the power to hire, fire, evaluate or direct the activities of County employees, the answer is yes.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 2 pts</p>
<p>18. Will the contractor provide regular reports to the County?</p> <p>If the individual attends regular staff meetings, the answer is probably yes.</p> <p>If the individual makes regular reports, either written or oral, to the County, the answer is probably yes.</p> <p>If the contractor's only reports are progress reports on specific jobs or projects, the answer is no.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>
<p>Section 4 - What is the time frame of the contract?</p>	
<p>19. Is the relationship between the County and the contractor intended to be ongoing?</p> <p>If the contract is for a specific job or project, the answer is no.</p> <p>If the intent of department is to renew a contract after it has expired, or if the department has previously renewed a contract for essentially the same services with the contractor, the answer is yes.</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (IC) 2 pts</p>
<p>20. Is there an expectation that the contractor will work for a specific number of hours, days, or weeks?</p> <p>If the intent of the department is to arrange specific work schedule with the contractor, the answer is yes. This is a strong indicator of employment status.</p> <p>If the department will rely on the contractor to staff an office or clinic, the answer is yes.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>
<p>21. Does the contract provide for termination without cause?</p> <p>The IRS considers the right to terminate at will, by either party, an indication of employer-employee relationship. For the contractor, if the right to terminate the relationship with the County exists without the contractor incurring any liability, such a right indicates that an employer/employee relationship exists. If an independent contractor terminates the relationship with the County, the contractor has likely breached the contract with the County and the County may be entitled to damages.</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (IC) 1 pt</p>

Section VI: How will the contractor be paid?	
<p>22. Will the contractor be paid by a time period such as bi-weekly or monthly?</p> <p>If the contractor will be paid based on time periods such as hour, day, week, or month, the answer is yes.</p> <p>Contractors that are truly independent are generally paid by the job, not by time. Payment by the job can include periodic payments based on a percentage of the job completed. Payment can be based on the number of hours needed to do the job times a fixed hourly rate; however, the contract maximum must remain fixed. If it takes more hours than anticipated to complete the contract, the contractor could not receive any additional payment for those hours.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>
<p>23. Will the contractor report time worked to the County?</p> <p>Even if not used to control pay, reporting time is an indicator of employment status. If the contractor reports time worked to the County, the answer is yes.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>
<p>24. Will the contractor bill the County for normal business expenses?</p> <p>Billing for overhead costs such as meals, clothing, transportation, rent, and insurance indicates status as an employee.</p> <p>An independent contractor generally includes these overheads as part of costs to be covered when developing fee schedules.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>
<p>25. Does the County provide any "benefits" to the contractor?</p> <p>If the County provides any leave periods similar to vacation or sick time, the answer is yes.</p> <p>If the County provides any liability, disability, health, life, etc., insurance, to the contractor (unless the benefit results from some other relationship, such as the relationship of the contractor's spouse to the County), the answer is yes.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>