

MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING:	May 24, 2011	AGENDA NO.:	19
SUBJECT:	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #4 to the Agreement (A-11938) with Cynthia Harlowe for Professional Consulting Services at NMC in an amount not to exceed \$200,000 in the aggregate and \$50,000 for the period July 1, 2011 to June 30, 2012.		
DEPARTMENT:	Natividad Medical Center		

RECOMMENDATION:

It is recommended that the Board of Supervisors Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #4 to the Agreement (A-11938) with Cynthia Harlowe for Professional Consulting Services at NMC in an amount not to exceed \$200,000 in the aggregate and \$50,000 for the period July 1, 2011 to June 30, 2012.

SUMMARY/DISCUSSION:

NMC is accredited by the Joint Commission, a non-profit organization that accredits over 18,000 healthcare organizations and programs in the United States. The accreditation process includes ongoing compliance with the Joint Commission standards which are designed to help organizations improve the safety and quality of care, treatment and services, an annual self-assessment for compliance with all standards, and an onsite survey every three years. The hospital will be surveyed by the Joint Commission during the calendar year 2011.

Cynthia Harlowe has provided onsite consulting services for Joint Commission survey preparation and the actual survey for NMC for over 15 years. NMC has performed well in all five onsite surveys where she provided consultation services. Her current agreement provides for onsite consulting services to assist NMC in completing, scoring the annual self-assessment, in providing input on establishing action plans for maintaining compliance with all standards and providing on-site assistance for the actual survey. Because the hospital will be surveyed during the calendar 2011, there is a need to continue to contract for Cynthia Harlowe's consulting services.

The recommendation is that the dollar amount for the agreement with Cindy Harlowe be for 50,000 for Fiscal Year 2012 and therefore a total of \$200,000 for the 2-year contract.

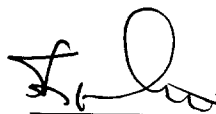
OTHER AGENCY INVOLVEMENT:

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

FINANCING:

The cost for this Amendment is \$50,000 and is included in the 2011/2012 Fiscal Year Recommended Budget. This action will not require any additional General Fund subsidy.

Prepared by:
Jane Finney, 755-4095
April 14, 2011



Harry Weis
Chief Executive Officer

Attachments: Amendments #1, 2 & 3, 4, Original Agreement, Board Order

MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING:	February 15, 2011	AGENDA NO.:
SUBJECT:	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #3 to the Agreement with Cynthia Harlowe for Professional Consulting Services at NMC in an amount not to exceed \$150,000 (an increase of \$50,000) for the period February 1, 2011 to June 30, 2011.	
DEPARTMENT:	Natividad Medical Center	

RECOMMENDATION:

It is recommended that the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #3 to the Agreement with Cynthia Harlowe for Professional Consulting Services at NMC in an amount not to exceed \$150,000 (an increase of \$50,000) for the period February 1, 2011 to June 30, 2011.

SUMMARY/DISCUSSION:

NMC is accredited by the Joint Commission, a non-profit organization that accredits over 18,000 healthcare organizations and programs in the United States. The accreditation process includes ongoing compliance with the Joint Commission standards which are designed to help organizations improve the safety and quality of care, treatment and services, an annual self-assessment for compliance with all standards, and an onsite survey every three years. The hospital will be surveyed by the Joint Commission during the calendar year 2011.

Cynthia Harlowe has provided onsite consulting services for Joint Commission survey preparation and the actual survey for NMC for over 15 years. NMC has performed well in all five onsite surveys where she provided consultation services. Her current agreement provides for onsite consulting services to assist NMC in completing and scoring the annual self-assessment and in providing input on establishing action plans for maintaining compliance with all standards.

There is an acute need to increase the scope of Cynthia Harlowe's work because of the vacancy in the Surgical Services Nursing Director Position. Her additional work will be operational and will include assisting hospital staff in implementing process changes in the Operating Room and Outpatient Surgery areas to assure complete compliance with the Joint Commission Standards.

The recommendation is that the dollar amount for the agreement with Cindy Harlowe be increased by \$50,000 for Fiscal Year 2011 for a total of \$100,000 for fiscal year 2011 and therefore a total of \$150,000 for the 2-year contract. With the vacancy in the Surgical Services Nursing Director, there is an acute need for her services to assist staff in the Operating Room and Outpatient Surgery areas to implement process changes assuring complete compliance with the Joint Commission standards. This increase allows for an additional 20 on-site days at \$2500 per day.

NMC has completed the recruitment and hiring of a new Surgical Services Nursing Director. The new director is scheduled to start in March 2011.


OTHER AGENCY INVOLVEMENT:

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

FINANCING:

The cost for this Amendment is \$50,000 and is included in the 2010/2011 Fiscal Year Approved Budget. This action will not require any additional General Fund subsidy.

Prepared by:
Jane Finney, 755-4095
January 13, 2011



Harry Weis
Chief Executive Officer

Attachments: Amendments #1, 2 & 3, Original Agreement, Board Order

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

Agreement No. A-11938

Authorize the Purchasing Manager for Natividad)
Medical Center (NMC) to execute Amendment #3)
to the Agreement with Cynthia Harlowe for)
Professional Consulting Services at NMC in an)
amount not to exceed \$150,000 (an increase of)
\$50,000) for the period February 1, 2011 to June)
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 Amendment #3 to the Agreement with Cynthia Harlowe for Professional Consulting Services at NMC in an amount not to exceed \$150,000 (an increase of \$50,000) for the period February 1, 2011 to June 30, 2011.

PASSED AND ADOPTED on this 1st day of March, 2011, by the following vote, to wit:

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

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on March 1, 2011.

Dated: March 1, 2011

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

By 
Deputy

AMENDMENT NO. 3
FOR PROFESSIONAL SERVICE AGREEMENT
BETWEEN Cynthia Harlowe AND
THE NATIVIDAD MEDICAL CENTER
FOR
Professional Consulting Services

The parties to Professional Service Agreement, dated July 1, 2009 between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Cynthia Harlowe (Contractor), hereby agree to amend their Agreement No. (SC889) on the following terms and conditions:

1. Contractor will continue to provide NMC with the same scope of service as stated in the original Agreement No. (SC889).
2. This Amendment shall become effective on February 1, 2011 and shall continue in full force until June 30, 2011.
3. The total amount payable by County to Contractor under Agreement No. (SC889) shall not exceed the total sum of \$150,000 for the full term of the Agreement and \$100,000 for fiscal year 2010-2011.
4. All other terms and conditions of the Agreement shall continue in full force and effect.
5. A copy of this Amendment shall be attached to the original Agreement No. (SC889).

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

CONTRACTOR

Signature Cynthia E. Harlowe

Dated 1/13/2011

Printed Name CYNTHIA E. HARLOWE

Title HEALTHCARE CONSULTANT

NATIVIDAD MEDICAL CENTER

Signature [Signature]
Purchasing Manager

Dated 3/8/2011

Signature [Signature]
NMC - CEO

Dated 1/20/11

Approved as to Legal Form:

Charles J. McKee, County Counsel

By [Signature]
Stacy Saetta, Deputy
Attorneys for County and NMC

Dated: 1/28, 2011

Reviewed as to fiscal provisions

[Signature]
Auditor/Controller
County of Monterey 1-28-11

**RENEWAL AMENDMENT NO. 2
FOR PROFESSIONAL SERVICE AGREEMENT
BETWEEN Cynthia Harlowe AND
THE NATIVIDAD MEDICAL CENTER
FOR
Professional Consulting SERVICES**

The parties to Professional Service Agreement, dated July 1, 2009 between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Cynthia Harlowe (Contractor), hereby agree to renew their Agreement No. (BPO310) on the following amended terms and conditions:

1. Contractor will continue to provide NMC with the same scope of service as stated in the original Agreement No. (BPO310).
2. This Renewal Amendment shall become effective on July 1, 2010 and shall continue in full force and extending the term date until June 30, 2011.
3. The total amount payable by County to Contractor under Agreement No. (BPO310) shall not exceed the total sum of \$100,000 for the full term of the Agreement and \$50,000 for fiscal year 2010-2011.
4. All other terms and conditions of the Agreement shall continue in full force and effect.
5. A copy of this Amendment shall be attached to the original Agreement No. (BPO310).

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

CONTRACTOR

Signature Cynthia E. Harlowe, MGS, CPA

Dated 5/20/10

Printed Name CYNTHIA E. HARLOWE, MGS, CPA

Title NEPHROLOGIC CONSULTANT

NATIVIDAD MEDICAL CENTER

Signature [Signature]
Purchasing Manager

Dated 6/8/10

Signature [Signature]
NMC - CEO

Dated 6/1/10

Approved as to Legal Form:

Charles J. McKee, County Counsel

By [Signature]
Stacy Saetta, Deputy
Attorneys for County and NMC

Dated: 6/4, 2010

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey 6-7-10

**AMENDMENT NO. 1
FOR PROFESSIONAL SERVICE AGREEMENT
BETWEEN Cynthia Harlowe AND
THE NATIVIDAD MEDICAL CENTER
FOR
Professional Consulting SERVICES**

The parties to Professional Service Agreement, dated July 1, 2009 between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Cynthia Harlowe (Contractor), hereby agree to amend their Agreement No. (BPO #310) on the following amended terms and conditions:

1. Contractor will provide NMC with the additional scope of service as stated in Exhibit C, which shall be attached to the original Agreement No. (BPO #310).
2. This Amendment shall become effective on February 1, 2010 and shall continue in full force until June 30, 2010.
3. The total amount payable by County to Contractor under Agreement No. (BPO #310) shall not exceed the total sum of \$50,000 for the full term of the Agreement and \$50,000 for fiscal year 2009-2010.
4. All other terms and conditions of the Agreement shall continue in full force and effect.
5. A copy of this Amendment shall be attached to the original Agreement No. (BPO #310).

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

CONTRACTOR

Signature Cynthia Harlowe Dated 2/17/2010
 Printed Name CYNTHIA HARLOWE Title HEALTHCARE CONSULTANT

NATIVIDAD MEDICAL CENTER

Signature [Signature] Dated 3/19/10
 Purchasing Manager
 Signature [Signature] Dated 3/6/10
 NMC - CEO

Approved as to Legal Form:
Charles J. McKee, County Counsel

By [Signature]
Stacy Saetta, Deputy
Attorneys for County and NMC

Dated: 3/17, 2010

Reviewed as to fiscal provisions
[Signature]
 Auditor-Controller
 County of Monterey
 3-18-10

NATIVIDAD MEDICAL CENTER

Ferguson, Harlowe, & Associates
EXHIBIT C

Contractor will perform professional consulting services February 1, 2010 through June 30, 2010 as outlined below:

- A. Provide on-site services, the equivalent of 20 days.
- B. Assist Natividad Medical Center in further implementation of the Joint Commission's Medical Staff Standards related to the Ongoing Professional Practice Evaluation (OPPE) and the Focused Professional Practice Evaluation (FPPE); review and revise the organization's Peer Review Policy, assist in the development of bi-annual reports for the OPPE for each physician service and assist in the development of criteria, content, and format of an FPPE.
- C. Assist Natividad Medical Center in completing and scoring the 2009 Joint Commission's Periodic Performance Review (PPR) self-assessment, provide input on establishing action plans and Measure of Success (MOS).
- D. Address each functional area within the 2009 Joint Commission Manual to include the Patient Safety Goals as applicable to each care setting, new Medication Use Standards, review of Environment of Care standards updates and interpretations, Medical Staff Standards and Natividad Medical Center's Priority Focus Areas as defined by the Joint Commission.
- E. Conduct appropriate interviews with leader or representative for each of the functional areas, in accordance with the CAMH manual, who can discuss the activity and responsibilities of the functional area and has responsibility to implement an action plan for compliance.
- F. Conduct interview(s) with representative who can describe the medical staff peer review process and the medical staff's involvement in performance improvement.
- G. Utilize appropriate staff interviews, document review, tracers, observation of practices, review of systems and processes, and medical record review to complete the PPR process.

County will pay contractor fees as follows:

1. Two-thousand five hundred dollars (\$2,500.00) per day for on-site consulting services. On-site consulting fees are based on a maximum nine-hour work day. On-site services in excess of nine hours per day will be billed at the consultant's hourly rate.
2. Off-site consulting services, including review and preparation of documents and reports, will be billed at two hundred fifty dollars (\$250.00) per hour plus expenses. Expenses include transcription, supplies, and other expenses directly related to the project.
3. Physician oversight time will be billed at three hundred dollars (\$350.00) per hour. Physician oversight to include review and preparation of documents and reports.

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 Cynthia Harlowe 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: Professional 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 \$25,000

2. TERM OF AGREEMENT. The term of this Agreement is from Jul 1, 2009 to Jun 30, 2010 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, performance of this Agreement by CONTRACTOR and/or its agent, employees or sub-contractors, excepting only low, 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.

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 and 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>Name</p> <hr/> <p>1441 Constitution Blvd. Salinas, CA. 93906</p> <hr/> <p>Address</p> <hr/> <p>831.755.4111</p> <hr/> <p>Phone</p>	<p>FOR CONTRACTOR:</p> <p>Cynthia E. Harlowe, MSN, CPHQ</p> <hr/> <p>Name and Title</p> <hr/> <p>1721 NW Cliffside Way Redmond, OR 97756</p> <hr/> <p>Address</p> <hr/> <p>541.390.3991</p> <hr/> <p>Phone</p>
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14. MISCELLANEOUS PROVISIONS.

- 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: [Signature]
NMC Contracts/Purchasing Agent

Date: 6/10/09

By: [Signature]
Department Head (if applicable)

Date: 5/27/09

By: [Signature]
William Litt
Deputy County Counsel

Date: 6/9/09

Approved as to Fiscal Provisions
By: [Signature]
Auditor/Controller

Date: 6-10-09

CONTRACTOR

Cynthia E. Harlowe, MSN, CPHQ
Contractor's Business Name***

Cynthia E. Harlowe, MSN, CPHQ
Signature of Chair, President, or Vice-President

Cynthia E. Harlowe, MSN, CPHQ
Name and Title

Date: May 20, 2009

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

Name and Title

Date: _____

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

NATIVIDAD MEDICAL CENTER

Ferguson, Harlowe, & Associates
EXHIBIT A

Contractor will perform professional consulting services July 2009 through December 2009 as outlined below:

- A. Provide on-site services, the equivalent of 20 days.
- B. Assist Natividad Medical Center in further implementation of the Joint Commission's Medical Staff Standards related to the Ongoing Professional Practice Evaluation (OPPE) and the Focused Professional Practice Evaluation (FPPE); review and revise the organization's Peer Review Policy, assist in the development of bi-annual reports for the OPPE for each physician service and assist in the development of criteria, content, and format of an FPPE.
- C. Assist Natividad Medical Center in completing and scoring the 2009 Joint Commission's Periodic Performance Review (PPR) self-assessment, provide input on establishing action plans and Measure of Success (MOS).
- D. Address each functional area within the 2009 Joint Commission Manual to include the Patient Safety Goals as applicable to each care setting, new Medication Use Standards, review of Environment of Care standards updates and interpretations, Medical Staff Standards and Natividad Medical Center's Priority Focus Areas as defined by the Joint Commission.
- E. Conduct appropriate interviews with leader or representative for each of the functional areas, in accordance with the CAMH manual, who can discuss the activity and responsibilities of the functional area and has responsibility to implement an action plan for compliance.
- F. Conduct interview(s) with representative who can describe the medical staff peer review process and the medical staff's involvement in performance improvement.
- G. Utilize appropriate staff interviews, document review, tracers, observation of practices, review of systems and processes, and medical record review to complete the PPR process.

County will pay contractor fees as follows:

1. Two-thousand five hundred dollars (\$2,500.00) per day for on-site consulting services. On-site consulting fees are based on a maximum nine-hour work day. On-site services in excess of nine hours per day will be billed at the consultant's hourly rate.
2. Off-site consulting services, including review and preparation of documents and reports, will be billed at two hundred fifty dollars (\$250.00) per hour plus expenses. Expenses include transcription, supplies, and other expenses directly related to the project.
3. Physician oversight time will be billed at three hundred dollars (\$350.00) per hour. Physician oversight to include review and preparation of documents and reports.

BUSINESS ASSOCIATE AGREEMENT

This Agreement, hereinafter referred to as "Agreement", is made effective July 1, 2009 by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, hereinafter referred to as "Covered Entity", and Cynthia Harlowe hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

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

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

WHEREAS, the State of California has enacted statutes designed to safeguard patient privacy including, without limitation, the Confidentiality of Medical Information Act ("CMLA"), California Civil Code § 56 *et seq.*, Senate Bill 541, enacted September 30, 2008, and Assembly Bill 211, enacted September 30, 2008; and

WHEREAS, the parties acknowledge that California law may include provisions more stringent and more protective of the confidentiality of health information than the provisions of HIPAA; and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, hereby referred to as the "Service Agreement" and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule and under California law; and

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

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

I. DEFINITIONS

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

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

medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

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

II. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate agrees:

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

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

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

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

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

(A) the disclosure is required by law; or

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

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by

Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

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

III. AVAILABILITY OF PHI

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

IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Service Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Service Agreement immediately, and seek injunctive and/or declaratory relief in a court of law having jurisdiction over Business Associate.

V. MISCELLANEOUS

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

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

discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

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

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule or California law, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall attempt in good faith to address such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, at the conclusion of such thirty-day period, a party believes in good faith that the Agreement still fails to comply with the HIPAA Privacy Rule or California law, then either party has the right to terminate this Agreement and the Service Agreement upon written notice to the other party. Neither party may terminate this Agreement without simultaneously terminating the Service Agreement, unless the parties mutually agree in writing to modify this Agreement or immediately replace it with a new Business Associate Agreement that fully complies with the HIPAA Privacy Rule and California law.

Business Associate acknowledges that Natividad Medical Center (NMC) has established a Corporate Compliance Program, and under this program NMC has developed a Code of Conduct Manual to provide guidance in the ethical and legal performance of our professional services. Business Associate further agrees to abide by all principles stated in the Code of Conduct while conducting business with Natividad Medical Center. A copy of the Code of Conduct & Principles of Compliance is available upon request.

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

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: Cynthia Harlowe, MD, CPHQ

Title: _____

Title: Healthcare Consultant

Date: _____

Date: 5/27/09

**EXHIBIT B
INSURANCE JUSTIFICATION**

Vendor/Contractor Name: Cynthia Harlow

Commercial General Liability Insurance Endorsement

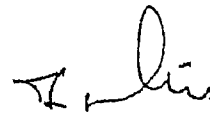
Business Justification:

Based on the Scope of Services provided herein, Commercial General Liability Insurance and the endorsement to the Commercial General Liability Insurance is not applicable. The hospital does not foresee any potential liability risks associated with this justification.

Automobile Liability Insurance Endorsement

Business Justification:

The vendor does not drive on the NMC Campus as part of the Agreement. NMC Administration requests that the Additional Insured Endorsement be waived for this vendor.



Harry Weis
Chief Executive Officer

Date: 5/2/14

COUNTY OF MONTEREY

DETERMINATION OF
CONTRACTOR'S STATUS FORM

NMC -
Department: Medical Staff/
Quality Mgt.

Contact: Jane Finney
Title: Quality Director
Phone: (831) 755-4095

Contractor: Cynthia Harlowe

Contact: Cynthia Harlowe
Title: Consultant
Phone: (415) 390-3901

Brief description of contract work: Consulting Services -
Quality Management Medical Staff and Joint
Commission Preparation

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: 31 (out of possible 53 points (IC))

Date: 5/28/09

Jane Finney
Department Representative
Quality Director
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 33. 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 _____ 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 checked="" type="checkbox"/> Yes <input 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 type="checkbox"/> Yes</p> <p><input checked="" 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</p> <p><input checked="" type="checkbox"/> No (IC) 2 pts</p>

<p>Section III - Does the contractor operate a business?</p>	
<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</p> <p><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</p> <p><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</p> <p><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</p> <p><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><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No (IC) 8 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><input checked="" type="checkbox"/> Yes</p> <p><input 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><input type="checkbox"/> Yes</p> <p><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><input type="checkbox"/> Yes</p> <p><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><input type="checkbox"/> Yes</p> <p><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 V: 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 type="checkbox"/> Yes <input checked="" 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No (IC) 1 pt</p>