

AMENDMENT NO. 5 TO AGREEMENT NO. A-11786

THIS FIFTH AMENDMENT TO AGREEMENT NO. A-11786 (“AMENDMENT NO. 5”) is made and entered, by and between County of Monterey (“COUNTY”), a political subdivision of the State of California on behalf of Natividad Medical Center, an acute care teaching hospital wholly owned and operated by COUNTY, and HOOPER, LUNDY & BOOKMAN, INC. (“ATTORNEY”) with respect to the following:

RECITALS

A. ATTORNEY and COUNTY previously entered into AGREEMENT NO. A-11786 for legal services dated April 1, 2010 (“AGREEMENT”), pursuant to which ATTORNEY provides advice and counsel on physician agreements and other healthcare law matters regarding Natividad Medical Center.

B. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 1 to AGREEMENT effective November 1, 2010, increasing COUNTY’s maximum liability over the full term of the Agreement to \$350,000, adding \$250,000 and extending the Agreement to June 30, 2011.

C. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 2 to AGREEMENT effective July 1, 2011, increasing COUNTY’s maximum liability over the full term of the Agreement to \$650,000, adding \$300,000 and extending the term to June 30, 2012.

D. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 3 to AGREEMENT effective January 1, 2012, increasing COUNTY’s maximum liability over the full term of the Agreement to \$1,125,000, adding \$475,000 and extending the term to June 30, 2013.

E. ATTORNEY and COUNTY previously entered into AMENDMENT NO. 4 to AGREEMENT effective July 1, 2013, increasing COUNTY’s maximum liability over the full term of the Agreement to \$1,625,000, increasing the professional service rates to be charged by ATTORNEY, adding \$500,000, and extending the term to June 30, 2015.

F. The AGREEMENT, as amended, is attached hereto as Attachment 1.

G. The parties wish to increase COUNTY’s maximum liability over the full term of the Agreement to \$1,771,000, adding \$146,000.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, COUNTY and ATTORNEY agree as follows:

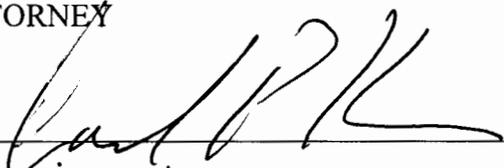
1. Paragraph 4, Section 6, Rates, Fees and Charges, is amended to increase the maximum amount of COUNTY's liability over the full term of the Agreement to \$1,771,000.
2. Effective Date of Amendment. This AMENDMENT NO. 5 shall become effective on July 1, 2014.
3. Exhibit A to the Agreement is replaced with Exhibit A-5, attached to this Amendment. All references in the Agreement to Exhibit A shall be construed to refer to Exhibit A-5.
4. Continuing Effect of Agreement. Except as provided herein, all other terms and conditions of AGREEMENT shall remain in full force and effect from the Effective Date of this Amendment.
5. Reference. After the date of this Amendment, any reference to the AGREEMENT shall mean the AGREEMENT as amended by this Amendment.
6. A copy of this AMENDMENT NO. 5 shall be attached to the AGREEMENT.

IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this AMENDMENT NO. 5 to be executed:

COUNTY OF MONTEREY

ATTORNEY

By _____

By  _____

Title _____

Title Principal _____

Date: _____

Date: May 22, 2014 _____

NATIVIDAD MEDICAL CENTER

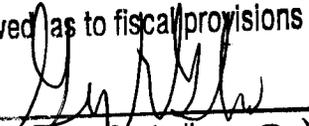
By _____

NMC-CEO

Date: _____

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

By 
STACY L. SAETTA
Deputy County Counsel

Reviewed as to fiscal provisions

Auditor-Controller 5-27-14
County of Monterey

Hooper, Lundy & Bookman, Inc.

April 1, 2010 through June 30, 2015

I. CONTACT INFORMATION

CONTRACTOR:

Glenn E. Solomon, Esq.
Hooper, Lundy, & Bookman, Inc.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8179

David P. Henninger, Esq.
Hooper, Lundy, & Bookman, Inc.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8177

COUNTY:

OFFICE OF THE COUNTY COUNSEL

Charles J. McKee
County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

Stacy L. Saetta
Deputy County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
(831) 755-5045

NATIVIDAD MEDICAL CENTER

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

II. SCOPE OF WORK

CONTRACTOR shall:

- A. Provide legal services with respect to physician agreements, and

- B. Other legal healthcare matters and other healthcare matters regarding Natividad Medical Center ("Natividad").

III. PAYMENT PROVISIONS

- A. COUNTY shall pay CONTRACTOR according to Section 6, PAYMENT CONDITIONS, of this agreement.
- B. CONTRACTOR's fees are based upon the number of attorney hours devoted to a client's matters, and the then-existing hourly rates for the personnel involved. At present, CONTRACTOR's standard hourly rates range from \$630 to \$825 for principals in the firm, from \$350 to \$705 for associates and senior counsel, and from \$290 to \$335 for paralegals. CONTRACTOR'S most preferred hourly rates range from \$565 to \$760 for principals in the firm, from \$310 to 620 for associates and senior counsel, and from \$255 to \$295 for paralegals. CONTRACTOR's hourly rates may be adjusted periodically. Variations in CONTRACTOR's current hourly rates may be made in some cases, either upward or downward, to account for complexity of issues, uniqueness of services, expertise of the involved attorney, etc. COUNTY shall be billed at preferred rates for CONTRACTOR's attorneys who provide services for the County. At present, Glenn E. Solomon's standard hourly rate is \$765; COUNTY shall be billed at his most preferred hourly rate of \$670. At present, David P. Henninger's hourly rate is \$795; COUNTY shall be billed at his most preferred hourly rate of \$685. At present, Laurence D. Getzoff's standard hourly rate is \$780; COUNTY shall be billed at his most preferred hourly rate of \$675. In addition to our fees, CONTRACTOR also charges for expenses incurred by CONTRACTOR on COUNTY's behalf. These expenses include, but are not limited to, long distance telephone calls, document processing, photocopying, facsimile, delivery costs and travel expenses. Such expenses shall be paid in accordance with COUNTY's Travel Policy.
- C. CONTRACTOR shall submit an invoice to the COUNTY no later than the 10th of the month following the month of service. Invoices shall be submitted to:
- Stacy L. Sietta
Deputy County Counsel
County Counsel's Office
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
- D. The maximum amount to be paid by COUNTY to CONTRACTOR under this agreement shall not exceed **One Million, Seven Hundred Seventy One Thousand Dollars (\$1,771,000)**.
- E. CONTRACTOR shall provide COUNTY with a detailed statement on a monthly basis, covering its current fees and expenses. It will describe services rendered,

and will also show the amount of COUNTY's retainer remaining in its trust account or the amount owing to CONTRACTOR.

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

IV. ADDITIONAL PROVISIONS

A. Reports

CONTRACTOR shall provide to Monterey County such reports as may be requested by the Board of Supervisors or County Counsel.

B. Agreement to Arbitrate and Mediate

In the event of any disputes between the parties to this Agreement over professional services rendered, the parties agree to resolve all such disputes through binding arbitration in Los Angeles County before a retired judge of the Los Angeles County Superior Court pursuant to the provisions of California *Code of Civil Procedure* § 1280, *et seq.*, and the Federal Arbitration Act. Such retired judge shall be selected by mutual agreement of the parties within 15 days of a demand for arbitration by any party. If the parties are unable to select an arbitrator through mutual agreement, an arbitrator shall be designated by the Los Angeles County Superior Court upon petition to that court by any party. The parties agree that speed and cost effectiveness of such arbitration are important to all parties to this agreement, and agree that any such arbitration shall be concluded within 120 days of the date of selection of the arbitrator. The parties also agree that prior to the arbitration, they shall engage in mediation pursuant to a mutually acceptable mediator, to be selected within 15 days of the date of the request for arbitration. If the parties are unable to agree upon a mediator within 15 days of the date of a demand for arbitration by any party, the mediator may be designated by the Los Angeles County Superior Court upon petition by any party. The mediation shall be completed within 60 days of the designation of a mediator. The parties shall share the costs of the arbitrator and the mediator, and each party shall bear its own attorneys' fees for both the mediation and the arbitration.

Notwithstanding the foregoing, in the event of an action by this firm to collect fees, *Business and Professions Code* § 6201 permits COUNTY to request non-binding arbitration through the local Bar Association, and if either party is unsatisfied with the outcome of the non-binding arbitration, they have the right to request a *trial de novo* in the Court. With respect to any action or proceeding by this firm to collect fees, COUNTY may elect within 30 days of notice of a demand for arbitration by this firm whether to proceed in accordance with the provisions for binding arbitration or whether to proceed in accordance with the procedures set forth in *Business and Professions Code* § 6201. If COUNTY does

not, the resolution of any such dispute will proceed in accordance with the mediation and arbitration language set forth in the preceding paragraph.

- C. Indemnification. Paragraph 8 of the Agreement shall be replaced in its entirety with the following:

8. Indemnification.

Indemnification for Professional Liability. For liability arising from professional and technical services provided under this Agreement, Hooper Lundy shall indemnify, defend and hold harmless County, its governing board, officers, agents, and employees from any loss, injury, damage, expense and liability to the extent arising out of the negligence of Hooper Lundy, its employees, or agents.

General Indemnification. For any liability, other than arising out of professional and technical services, Hooper Lundy shall indemnify, defend and hold harmless, County, its governing board, officers, agents, and employees from any loss, injury, damage, expense and liability resulting from injury to or death of any person and loss of or damage to property, or claim of such injury, death, loss or damage caused by an act or omission in the performance under this Agreement by Hooper Lundy, its employees, or agents, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of the County.

Notwithstanding the foregoing two paragraphs, Hooper Lundy's contract indemnity obligation shall be limited to indemnity liability for which Hooper Lundy is insured by the program of insurance described in described in Paragraph 9 of the Agreement and Section IV D. of this Exhibit A.

- D. Professional Liability Insurance. The provision concerning Professional Liability Insurance, located within Paragraph 9.03, Section 9 of the Agreement, shall be replaced in its entirety with the following:

Based on scope of work, CONTRACTOR shall provide professional liability insurance in the amount of not less than \$3,000,000 per claim and \$5,000,000 in the aggregate to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.