



# COUNTY OF MONTEREY - BOARD OF SUPERVISORS

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|               |  |               |                                     |
|---------------|--|---------------|-------------------------------------|
| File #:       | A 14-075   | Name:         | Nixon Peabody LLP<br>Amendment No.3 |
| Type:         | BoS Agreement  | Status:       | Scheduled PM                        |
| File created: | 5/9/2014   | In control:   | Board of<br>Supervisors             |
| On agenda:    | 6/3/2014   | Final action: |                                     |
| Title:        | Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 3 to the Agreement No. (A-12242/MYA503) with Nixon Peabody LLP for Legal Services at NMC, extending the term of the Agreement to June 30, 2015 in an amount not to exceed \$300,000 (no increase from the previously approved amount) in the aggregate. |               |                                     |
| Attachments:  | 1. <a href="#">Nixon Peabody Amenment No.3.pdf</a> , 2. <a href="#">Nixon Peabody Prior Agreements.pdf</a> , 3. <a href="#">Nixon Peabody Spend Sheet.pdf</a> , 4. <a href="#">Completed Board Order</a>   |               |                                     |

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## Title

Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 3 to the Agreement No. (A-12242/MYA503) with Nixon Peabody LLP for Legal Services at NMC, extending the term of the Agreement to June 30, 2015 in an amount not to exceed \$300,000 (no increase from the previously approved amount) in the aggregate.

## Report

### RECOMMENDATION:

It is recommended the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 3 to the Agreement No. (A-12242/MYA503) with Nixon Peabody LLP for Legal Services at NMC, extending the term of the Agreement to June 30, 2017 in an amount not to exceed \$300,000 (no increase from the previously approved amount) in the aggregate.

### SUMMARY:

Nixon Peabody LLP is a Global 100 law firm that has represented the County with respect to public finance matters. On October 10, 2011, the County entered into an agreement for up to \$100,000 to provide legal assistance and advice on various financing matters, including issues regarding changes in hospital structure and governance with respect to Natividad Medical Center. The County continued

to require the Nixon firm's counsel with respect to the performance of due diligence regarding a potential affiliation with Salinas Valley Memorial Healthcare System affiliation and financing issues related to the structure and governance of Natividad Medical Center and, accordingly, the Board of Supervisors extended its agreement to increase the scope of services and to increase the maximum liability by \$200,000 for a total contract amount of \$300,000 and to extend the term to June 30, 2013. In light of continued need for Nixon's advice and consultation concerning the impact of health care reform. NMC seeks to amend the agreement with Nixon for an additional (3) years to June 30, 2015 with no increase to the current maximum liability of \$300,000.

#### **OTHER AGENCY INVOLVEMENT:**

County Counsel has reviewed and approved this Amendment No. 3 as to legal form and risk provisions. Auditor-Controller has reviewed and approved this Amendment No. 3 as to fiscal provisions. The CAO-Budget and Analysis Division has advised to inform the BOS the spending authority (appropriations) associated with NMC's FY 2014 Adopted Budget has been exceeded and approval and authorization for modification of NMC's appropriation budget should be presented to the BOS. Since NMC is an Enterprise Fund, this does not prevent continued expenditures and is not a legal requirement, but it is considered good public policy, transparency and fiscal management. The Amendment has also been reviewed and approved by Natividad Medical Center's Finance Committee 4.24.14 and Board of Trustees 5.2.14.

#### **FINANCING:**

There is no cost for this Amendment No. 3. As a result of Amendment No. 1, the Board of Supervisors approved a \$200,000 increase for Fiscal Year 2012-2013 in the maximum liability for the Agreement (for a total Agreement amount not to exceed \$300,000 in the aggregate). \$100,000 is included in the Fiscal Year 2014/2015 Adopted Budget. Remaining funds from the previous year's purchase orders will be rolled over to succeeding Fiscal Years 2014/2015. NMC is confirming its appropriations position and if its spending authority has been exceeded will return to the Board. There is no impact to the General Fund

Prepared by: Daniel Leon, Chief Financial Officer, 783-2561

Approved by: Harry Weis, Chief Executive Officer, 783-2553

Attachments: Amendment Nos. 3 and 1, Renewal and Amendment No. 2, Original Agreement, and Spend Sheet

Attachments on file with the Clerk to the Board's Office



## Monterey County

### Board Order

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

**Agreement No.: A-12242**

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

- a. Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 3 to the Agreement No. (A-12242/MYA503) with Nixon Peabody LLP for Legal Services at NMC, extending the term of the Agreement to June 30, 2015 in an amount not to exceed \$300,000 (no increase from the previously approved amount) in the aggregate; and
- b. Directed staff to include in future contract amendments to add statement regarding compliance with RFP's and/or RFQ's for contracts.

PASSED AND ADOPTED on this 3rd day of June 2014, 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 77 for the meeting on June 3, 2014.

Dated: June 4, 2014  
File Number: A 14-075

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

By Denise Hancock  
Deputy

**AMENDMENT NO. 3  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN Nixon Peabody LLP AND  
THE NATIVIDAD MEDICAL CENTER  
FOR  
Legal Services**

This Amendment No. 3 to Professional Services Agreement ("Agreement"), dated October 10, 2011 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Nixon Peabody (Contractor), with respect to the following:

**RECITALS**

**WHEREAS**, the County and Contractor amended the Agreement previously on March 1, 2013 via Amendment No. 1, and on July 1, 2013 via Amendment No. 2; and

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

**AGREEMENT**

**NOW, THEREFORE**, the parties agree to amend the Agreement as follows:

1. Section 2. "TERM OF AGREEMENT" shall be amended by removing, "*The term of this Agreement is from October 11, 2011 to July 1, 2014 unless sooner terminated pursuant to this Agreement*" and replacing it with "*The term of this Agreement is October 11, 2011 to June 30, 2017 unless sooner terminated pursuant to this Agreement*".
2. Except as provided herein, all remaining terms, conditions and provisions of the Agreement and Renewal and Amendment Nos. 2, and Amendment Nos. 1 are unchanged and unaffected by this Amendment and shall continue in full force and effect as set forth in the Agreement.
3. A copy of this Amendment and all previous amendments shall be attached to the original Agreement (No.A-12242).
4. The effective date of this Amendment is July 1, 2014.

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:   
Kristen Aldrich  
NMC Contracts Manager

Date: 7-1-14

By:   
Harry Weis, NMC Chief Executive Officer

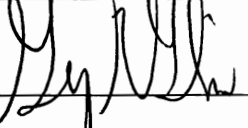
Date: 4/8/14

**APPROVED AS TO LEGAL PROVISIONS**

By:   
Anne Brauer  
Monterey County, Deputy County Counsel

Date: 5/1/14

**APPROVED AS TO FISCAL PROVISIONS**

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

Date: 5-2-14

**Contractor**

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

Signature of Chair, President, or Vice-President

Name and Title

Date:

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

Name and Title

Date:

**\*\*\*Instructions**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).

If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).

If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required)

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: \_\_\_\_\_

**APPROVED AS TO LEGAL PROVISIONS**

By: \_\_\_\_\_  
Anne Brauer  
Monterey County, Deputy County Counsel

Date: \_\_\_\_\_

**APPROVED AS TO FISCAL PROVISIONS**

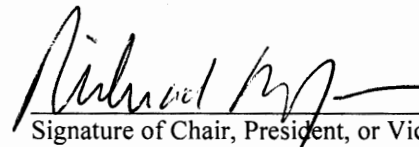
By: \_\_\_\_\_  
Gary Giboney  
Monterey County Auditor/Controller's Office

Date: \_\_\_\_\_

**Contractor**

Nixon Peabody LLP

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

  
Signature of Chair, President, or Vice-President

Richard M. Jones, Esq., Partner  
Name and Title

Date: April 23, 2014

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

\_\_\_\_\_  
Name and Title

Date: \_\_\_\_\_

**\*\*\*Instructions**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).

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