

**AMENDMENT NO. 1  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN B.E SMITH INC. AND  
THE NATIVIDAD MEDICAL CENTER  
FOR  
INTERIM EMPLOYEE SERVICES**

This Amendment No. 1 to Professional Services Agreement ("Agreement"), dated January 1, 2013, is entered into by and between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and **B.E Smith Inc.** (Contractor), with respect to the following:

**RECITALS**

**WHEREAS**, the County and Contractor amended the Agreement previously on **January 1, 2013** via the Agreement.

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

**WHEREAS**, the County and Contractor wish to amend the Agreement to increase the amount of the Agreement by \$576,200 because of and to continue to provide services associated with Interim Employee Services within the County of Monterey.

**AGREEMENT**

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

1. Contractor will continue to provide NMC with the same scope of services as stated in the original Agreement (No. MYA723).
2. Section 2. "PAYMENTS BY NMC" shall be amended by removing, "*The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$100,000.*" and replacing it with "*The total amount payable by County to CONTRACTOR under Agreement No. (MYA723) shall not exceed the total sum of \$676,200 for the full term of the Agreement.*"
3. Section 3. "TERM OF AGREEMENT" shall be amended by removing, "*The term of this Agreement is from January 1, 2013 to June 30, 2013 unless sooner terminated pursuant to this Agreement*" and replacing it with "*The term of this Agreement is from January 1, 2013 to December 31, 2013 unless sooner terminated pursuant to this Agreement.*"
4. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment and shall continue in full force and effect as set forth in the Agreement.
5. A copy of this Amendment shall be attached to the original Agreement (No. MYA723).
6. The effective date of this Amendment is March 12, 2013.

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

**CONTRACTOR**

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

Dated 2/6/2013

Printed Name Bryan Christensen

Title Vice President

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

Dated \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

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

**NATIVIDAD MEDICAL CENTER**

Signature \_\_\_\_\_  
Purchasing Manager


Dated \_\_\_\_\_

Signature   
NMC - CEO

Dated 2/12/13

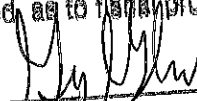
**Approved as to Legality and Legal Form:**

Charles J. McKee, County Counsel

By   
Anne Brauer  
Deputy Attorney for County and NMC

Dated: Feb 21, 2013

Reviewed as to fiscal provisions

  
Auditor-Controller  
County of Monterey

2-25-13

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

This 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 **B.E. Smith Inc.** hereinafter "CONTRACTOR").

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

1. **GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED:** NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A and Exhibit B** in conformity with the terms of the Agreement. The services are generally described as follows: **Interim Employee Services.**
2. **PAYMENTS BY NMC:** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of **\$100,000.**
3. **TERM OF AGREEMENT:** The term of this Agreement is from **January 1, 2013 to June 30, 2013** 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.

3.1. NMC reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4. **SCOPE OF SERVICES AND ADDITIONAL PROVISIONS/EXHIBITS:** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A: Scope of Services/Payment Provisions: Interim Patient Care-Medical/Surgical Leader**  
**Exhibit B: Scope of Services/Payment Provisions: Interim Patient Care-Senior Leader**

5. **PERFORMANCE STANDARDS**

- 5.1. 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.
- 5.2. 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.
- 5.3. 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.

6. **PAYMENT CONDITIONS**

- 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. NMC (Monterey County) does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.
- 6.3. 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.
- 6.4. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

## 7. TERMINATION

- 7.1. 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.
- 7.2. 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.

## 8. INDEMNIFICATION

- 8.1. CONTRACTOR shall indemnify, defend, and hold harmless NMC (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 agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The CONTRACTOR shall reimburse the County 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 the County under this Agreement.

## 9. INSURANCE

### 9.1. 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.

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 than 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.

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:

**9.2. 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.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

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

**9.3. 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.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

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

**9.4. 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.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

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

**9.5. 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.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

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

**10. Other Insurance Requirements:**

- 10.1. 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.
- 10.2. 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.
- 10.3. **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 form 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 form for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.
- 10.4. 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.
- 10.5. 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.

**11. RECORDS AND CONFIDENTIALITY.**

**11.1. 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.

**11.2. NMC Records:**

When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.

**11.3. 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.

**11.4. 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.

**11.5 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.

**12. NON-DISCRIMINATION.**

**12.1.** 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.

**13. COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.**

**13.1.** 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.

**14. INDEPENDENT CONTRACTOR.**

14.1. 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 and 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.

**15. NOTICES.**

15.1. 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.

| <u>NATIVIDAD MEDICAL CENTER:</u>   | <u>CONTRACTOR:</u>  |
|--|---|
| Sid Cato<br>Management Analyst, Contracts<br>Natividad Medical Center<br>1441 Constitution Blvd<br>Salinas, CA. 93906<br>Phone: 831.783-2620<br>FAX:<br><a href="mailto:catosl@natividad.com">catosl@natividad.com</a> | Name: <u>RICK MCGLOCKLIN</u><br>Title: <u>CHIEF FINANCIAL OFFICER</u><br>Address: <u>8801 LINNEN BOULEVARD</u><br><u>LEWEXA, KS 66219</u><br>Phone: <u>913-752-4500</u><br>Email: <u>rmcglockin@besmith.com</u> |

**16. MISCELLANEOUS PROVISIONS.**

- 16.1. 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.
- 16.2. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 16.3. 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.
- 16.4. 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.



- 16.5. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 16.6. 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.
- 16.7. 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.
- 16.8. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 16.9. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 16.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 16.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 16.12. 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.
- 16.13. 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.
- 16.14. 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.
- 16.15. 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.
- 16.16. 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]  
Sid Cato NMC Contracts

Date: 12-21-12

By: [Signature]  
Harry Weis, NMC CEO

Date: 12/19/12

**APPROVED AS TO LEGAL PROVISIONS**

By: [Signature]  
Anne Brauer, Kay BERMAN  
Monterey County, Deputy County Counsel

Date: 1/3/13

**APPROVED AS TO FISCAL PROVISIONS**

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

Date: 1-9-13

**CONTRACTOR**

B. E. Smith, Inc.  
Contractor's Business Name\* (see instructions)

[Signature]  
Signature of Chair, President, or Vice-President

Raymond J. Christensen, Vice President  
Name and Title

Date: 12/12/12

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

Rick M. GLOCKLIN, CFO  
Name and Title

Date: 12/12/12

**\*\*\*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**).



**B . E . S M I T H**

**EXHIBIT A**

**INTERIM SERVICES AGREEMENT**

**1. B.E. Smith Interim Services, Inc. ("Smith")** Smith agrees to provide Natividad Medical Center, 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 ("Client") an interim leadership professional for the following position: **Interim Patient Care – Medical/Surgical Leader (Position)**.

- (a) Smith will interview Client to determine Client's requirements for Professional's leadership, managerial, operational, and/or clinical background.
- (b) Smith will present to Client a Professional Smith believes meets Client's requirements for Position.
- (c) Upon acceptance of Professional by Client, Professional will be paid by Smith as an employee of Smith, and Smith assumes responsibility for such payment.
- (d) Professional will not be considered an employee of Client. Client will direct Professional only as to the ultimate outcome of the work to be performed.
- (e) If Professional does not meet the Client's requirements for the position once the Professional is working for Client, Smith will replace the Professional with a different candidate at no additional expense to the Client.

**2. Smith.** Smith agrees to pay for lodging, airfare, and rental car for Professional during the entire term of this agreement.

**3. Smith.** Smith agrees to provide a Project Leader who will visit the job site two times during the engagement. Any additional visits shall be negotiated between the Client and Smith, and must be agreed upon in advance in a writing signed by the parties to this contract if they result in any additional cost to Client, including by not limited to expense reimbursement.

**4. Client.** Client agrees to pay to Smith five thousand dollars after the Professional completes a trial of ten days working for the Client.

Client also agrees, upon acceptance of Professional:


- (a) To allow Professional to travel home twice per month. When Professional travels home twice per month, they will leave the hospital no earlier than 1700 on Thursday returning to work on the following Tuesday no later than 0800. All Travel will be paid in accordance with the County of Monterey Travel Policy.
- (b) To pay to Smith seven thousand eight hundred dollars for each week or any part thereof after the first week for services rendered by Smith. Payment will be in accordance with section 6.01 of Natividad Medical Center/County of Monterey agreement for Professional Services.

(i) The first week's fee will be prorated based on the number of weekdays worked or traveled by the Professional during the first week.


(ii) If Client delays Professional's start date by five calendar days or more from date of acceptance, Client's first week prorated fee will begin with the sixth day following the day of the presentation call.

(c) To reimburse Smith for all of Smith's Project Leader travel expenses for two site visits, including air travel, lodging, meals and car rental, in accordance with the County of Monterey Travel Policy.

(e) In the event Professional or any candidate presented by Smith is subsequently hired, retained, contracted or otherwise engaged by Client within twenty four months after the later of (i) the presentation by Smith or (ii) the termination of this Agreement, Client will pay to Smith a placement fee of one hundred and fifty thousand dollars. This placement fee is due in full to Smith when the Professional or candidate is hired, retained, or contracted by Client other than under the auspices of Smith.

  
B. E. Smith, Inc., by  
Bryan J. Christianson  
Vice President

Date: 12/12/12

  
Natividad Medical Center, by  
Name: Harvey Weiss  
Title: CEO

Date: 12/19/12



**B . E . S M I T H**

**EXHIBIT B**

**INTERIM SERVICES AGREEMENT**

**1. B.E. Smith Interim Services, Inc. ("Smith")** Smith agrees to provide Natividad Medical Center, 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 ("Client") an interim leadership professional for the following position: **Interim Patient Care - Senior Leader (Position)**.

- (a) Smith will interview Client to determine Client's requirements for Professional's leadership, managerial, operational, and/or clinical background.
- (b) Smith will present to Client a Professional Smith believes meets Client's requirements for Position.
- (c) Upon acceptance of Professional by Client, Professional will be paid by Smith as an employee of Smith, and Smith assumes responsibility for such payment.
- (d) Professional will not be considered an employee of Client. Client will direct Professional only as to the ultimate outcome of the work to be performed.
- (e) If Professional does not meet the Client's requirements for the position once the Professional is working for Client, Smith will replace the Professional with a different candidate at no additional expense to the Client.

**2. Smith.** Smith agrees to pay for lodging, airfare, and rental car for Professional during the entire term of this agreement.

**3. Smith.** Smith agrees to provide a Project Leader who will visit the job site two times during the engagement. Any additional visits shall be negotiated between the Client and Smith, and must be agreed upon in advance in a writing signed by the parties to this contract if they result in any additional cost to Client, including by not limited to expense reimbursement.

**4. Client.** Client agrees to pay to Smith five thousand dollars after the Professional completes a trial of ten days working for the Client.

Client also agrees, upon acceptance of Professional:

- (a) To allow Professional to travel home twice per month. When Professional travels home twice per month, they will leave the hospital no earlier than 1700 on Thursday returning to work on the following Tuesday no later than 0800. All Travel will be paid in accordance with the County of Monterey Travel Policy.
- (b) To pay to Smith eight thousand four hundred dollars for each week or any part thereof after the first week for services rendered by Smith. Payment will be in accordance with section 6.01 of Natividad Medical Center/County of Monterey agreement for Professional Services.

(i) The first week's fee will be prorated based on the number of weekdays worked or traveled by the Professional during the first week.

(ii) If Client delays Professional's start date by five calendar days or more from date of acceptance, Client's first week prorated fee will begin with the sixth day following the day of the presentation call.

(c) To reimburse Smith for all of Smith's Project Leader travel expenses for two site visits, including air travel, lodging, meals and car rental, in accordance with the County of Monterey Travel Policy.

(e) In the event Professional or any candidate presented by Smith is subsequently hired, retained, contracted or otherwise engaged by Client within twenty four months after the later of (i) the presentation by Smith or (ii) the termination of this Agreement, Client will pay to Smith a placement fee of one hundred and fifty thousand dollars. This placement fee is due in full to Smith when the Professional or candidate is hired, retained, or contracted by Client other than under the auspices of Smith.



B. E. Smith, Inc., by  
Bryan J. Christianson  
Vice President

Date: 12/12/12

\_\_\_\_\_  
Natividad Medical Center, by

Name:

Title:

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

# BUSINESS ASSOCIATE AGREEMENT

This Agreement, hereinafter referred to as "**Agreement**", is made effective **January 1, 2011** 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 **B. E. Smith Inc.** 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 ("CMIA"), 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 CMIA 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:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**BUSINESS ASSOCIATE:**

By: *Byron J. Christensen*

Title: *Vice President*

Date: *12/30/2010*