

**AMENDMENT NO. 1  
TO SERVICES AGREEMENT  
BETWEEN B.E. SMITH, INC. AND  
NATIVIDAD MEDICAL CENTER  
FOR  
INTERIM MANAGEMENT-LEVEL SERVICES**

This Amendment No. 1 to the Services Agreement (“Agreement”) which was effective on June 26, 2018 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center (hereinafter “NMC”), B.E. Smith, Inc. (hereinafter “CONTRACTOR”); (collectively, the County, NMC and CONTRACTOR are referred to as the “Parties”), with respect to the following:

**RECITALS**

**WHEREAS**, the Agreement was executed for interim management-level services with a term of July 1, 2018 through June 30, 2021 and a total Agreement amount not to exceed \$300,000; and

**WHEREAS**, NMC and CONTRACTOR currently wish to amend the Agreement to extend it for an additional two (2) year period (July 1, 2021 through June 30, 2023) for a revised full agreement term of July 1, 2018 through June 30, 2023 with an \$300,000 increase to allow for services to continue for a total Agreement amount of \$600,000 with changes to the scope of work attached hereto as “Exhibit A-1 per Amendment No. 1”.

**AGREEMENT**

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

The Agreement is hereby renewed on the terms and conditions as set forth in the Original Agreement incorporated herein by this reference, except as specifically set forth below.

1. Section 2 / Paragraph titled, “PAYMENTS BY NMC” shall be amended to the following:  
*“NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in EXHIBIT A per the Original Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$600,000.”*
2. The first sentence of Section 3 /Paragraph titled, “TERM OF AGREEMENT” shall be amended to the following:  
*“The term of this Amendment is from July 1, 2021 through June 30, 2023 unless sooner terminated pursuant to the terms of this Agreement.”*

3. Section 4/ Paragraph titled, "SCOPE OF SERVICES AND ADDITIONAL PROVISIONS/EXHIBITS" shall be amended to the following:  
*"The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:*  
**Exhibit A: Scope of Services/Payment Provisions**  
**Exhibit A-1: revised Scope of Services/Payment Provisions per Amendment No. 1"**
4. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 1 and shall continue in full force and effect as set forth in the Agreement.
5. A copy of this Amendment No. 1 shall be attached to the Agreement.
6. This Amendment No. 1 shall be effective when both parties have signed.

*The remainder of this page was intentionally left blank.*

*~ Signature page to follow ~*

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Amendment No. 1 on the basis set forth in this document and have executed this Amendment No. 1 on the day and year set forth herein.

**NATIVIDAD MEDICAL CENTER**

By: \_\_\_\_\_  
Gary R. Gray, DO, CEO

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

**APPROVED AS TO LEGAL PROVISIONS**

By: \_\_\_\_\_  
Monterey County Deputy County Counsel

Date: 3/17/2020

**APPROVED AS TO FISCAL PROVISIONS**

By: \_\_\_\_\_  
Monterey County Deputy Auditor/Controller

Date: 3/18/2020

**CONTRACTOR**

\_\_\_\_\_  
B.E. Smith, Inc.  
**CONTRACTOR's Business Name**  
\*\*\*See instructions below\*\*\*

By: Cody Burch  
(Signature of: Chair, President, or Vice-President)

Cody Burch  
Executive Vice President  
Name and Title

Date: 3/9/20

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

Jacob Meyer, Finance Manager  
Name and Title

Date: 3/9/20

**\*\*\*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 an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).

## EXHIBIT A-1 SCOPE OF SERVICES/PAYMENT PROVISIONS

I. CONTRACTOR agrees to provide NMC, a general acute care teaching hospital wholly owned and operated by the County of Monterey, interim management-level professionals (hereinafter "Professional"), both clinical and non-clinical, on as as-needed basis per NMC's request.

### II. CONTRACTOR Obligations:

- a. CONTRACTOR will interview NMC's NMC Human Resources Administrator or authorized delegate to determine NMC's requirements for Professional's leadership, managerial, operational, and/or clinical background.
- b. CONTRACTOR will present to NMC a Professional whom CONTRACTOR believes meets NMC's requirements for the NMC position.
- c. Upon acceptance of Professional by NMC, Professional will be paid by CONTRACTOR as an employee of CONTRACTOR, and CONTRACTOR assumes responsibility for such payment.
- d. Professional will not be considered an employee of NMC or the County of Monterey. NMC will direct Professional only as to the ultimate outcome of the work to be performed.
- e. If Professional does not meet NMC's requirements for the position once the Professional is working for NMC, CONTRACTOR will replace the Professional with a different candidate at no additional expense to NMC.
- f. CONTRACTOR shall be responsible for conforming to all applicable Federal and State labor laws and regulations.
- g. Billing rates shall be presented to NMC by CONTRACTOR once the need for a Professional has been defined and presented to CONTRACTOR by NMC. All billing rates shall be submitted in the form of a flat weekly billing rates; assuming a forty (40) hour work week unless otherwise specified. NMC reserves the right to negotiate the presented billing rate for each Professional. Overtime compensation shall not be permitted unless approved in advance and in writing by NMC.
- h. CONTRACTOR agrees that neither the CONTRACTOR nor its employees shall have any claim under this Agreement, or otherwise, against the County of Monterey for employment compensation, Workers' Compensation, unemployment compensation or insurance, vacation pay sick leave, retirement benefits, Social Security benefits, disability insurance benefits, or any other form of employee benefits.
- i. It will be expressly agreed by the parties that no work, act, commission or omission of CONTRACTOR or any of CONTRACTOR's employees shall be construed to make or render CONTRACTOR or any CONTRACTOR's employees, the agent, employee or servant of the County.
- j. CONTRACTOR Invoicing:  
CONTRACTOR shall provide to NMC once monthly an invoice for any and all Professionals sent by CONTRACTOR to NMC. The invoice shall state the name of the

Professional and the job title that the Professional is temporarily rendering services as for NMC. Invoices shall be itemized on a weekly basis with the billing period/days worked clearly specified.

- k. Permanent Hiring of Professional: In the event Professional or any candidate presented by CONTRACTOR is subsequently hired, retained, contracted or otherwise engaged by NMC within twelve months after the later of (i) the presentation by CONTRACTOR or (ii) the termination of this Agreement, NMC agrees to pay CONTRACTOR a placement fee equal to a percentage of their salary. Percentage is determined on length of time NMC contracts the interim candidate. Within the first three months: 25% of salary. Within three through twelve months: 15% of salary and after twelve months: 10% of salary. This placement fee is due in full to CONTRACTOR when the Professional or candidate is hired, retained, or contracted by NMC other than under the auspices of CONTRACTOR.

### **III. Other Terms and Conditions Associated with Temporary Employees:**

- a. CONTRACTOR shall identify in writing to NMC any individual with prior PERS affiliation who is sent to report for NMC service under the AGREEMENT, at least two days prior to the individual being assigned by CONTRACTOR for service to NMC.
- b. CONTRACTOR shall identify in writing to NMC any PERS annuitant who is sent to report for NMC service under the AGREEMENT, at least two days prior to the individual being assigned by CONTRACTOR for service to NMC.
- c. The term “identify” is defined for purposes of this section to include both (1) the CONTRACTOR’s employee name and (2) the last four digits of the employee’s Social Security Number.
- d. The term “PERS affiliation” is defined for purposes of this section to mean the CONTRACTOR’s employee had previously worked for a governmental entity that participates or participated in CalPERS.
- e. Should CONTRACTOR fail to properly identify a PERS annuitant or a CONTRACTOR employee with prior PERS affiliation, CONTRACTOR shall be held responsible for any costs assessed, or eligible to be assessed, by CalPERS relating to the assignment to the County of such individual.
- f. The term “PERS annuitant” is defined for purposes of this section as a person who has retired from a CalPERS agency and who is receiving a retirement allowance from CalPERS.
- g. TEMPORARY EMPLOYMENT ASSIGNMENT: CONTRACTOR shall be responsible for tracking cumulative hours per employee for all assignments at NMC. CONTRACTOR shall notify the NMC Human Resources Administrator at [BouyeaJ@natividad.com](mailto:BouyeaJ@natividad.com) when the Professional’s hours working for the NMC are approaching 650 hours within a fiscal year (7/1-6/30).
- h. An employee of the CONTRACTOR shall not be assigned to work at the NMC for more than 720 hours in a fiscal year (7/1-6/30).
- i. NMC nor the County of Monterey shall not pay CONTRACTOR for services rendered beyond 720 hours per fiscal year.