

## **AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES**

**THIS AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES** (“Agreement”) is made and entered by and between the COUNTY OF MONTEREY (“COUNTY”) on behalf of the County owned and operated Natividad Medical Center (“NMC”), an acute care facility, and **KING & SPALDING LLP** (“LAW FIRM”).

### **RECITALS**

This Agreement is made with respect to the following facts:

- A. The COUNTY Board of Supervisors may contract for legal services for the COUNTY when it is necessary and appropriate that special legal services be performed for the COUNTY and its officers and employees.
- B. COUNTY desires to retain LAW FIRM to provide healthcare legal services to the COUNTY.
- C. LAW FIRM is specially trained, experienced, expert, and competent to perform the legal services required. COUNTY specifically seeks the expertise of Daron L. Tooch and enters into this agreement with the understanding that Daron L. Tooch will be the primary attorney providing services under this Agreement, although other attorneys in the firm may be utilized on an as-needed basis.

NOW, THEREFORE, the parties agree as follows:

### **1. EFFECTIVE DATE AND TERM**

1.01 This Agreement shall be effective as of November 1, 2023 through October 31, 2026, whichever is later, unless earlier terminated as set forth below. This Agreement may be amended from time-to-time upon the mutual agreement of the parties.

### **2. SERVICES TO BE PERFORMED**

2.01. Services to be Performed by LAW FIRM. COUNTY hereby hires LAW FIRM to render independent legal services to COUNTY, subject to the terms of this Agreement. The primary attorney providing services hereunder shall be Daron L. Tooch, although other attorneys in the firm may be utilized on an as-needed basis. LAW FIRM shall perform said services faithfully and well, when needed by and as requested by COUNTY. The services to be performed under this Agreement shall consist of providing healthcare legal advice to COUNTY, as described in Recital “B,” above, and more specifically described in Exhibit A, attached hereto and incorporated herein by reference. LAW FIRM shall perform only such services as are within the expertise of the individual attorneys on LAW FIRM's staff, and LAW FIRM will notify COUNTY promptly if any work requested is beyond such expertise. LAW FIRM shall

diligently provide such legal services as are necessary and approved by COUNTY in a professional, timely manner. LAW FIRM shall perform all of its services with due regard to ethical guidelines and the client's interests.

2.02. Conflicts of Interest. LAW FIRM does not have an actual or potential interest adverse to COUNTY nor does LAW FIRM presently represent a person or firm with an adverse interest to COUNTY with respect to the matter accepted.

2.03. Direction from and Consultation with County Counsel. LAW FIRM shall coordinate and consult with and receive direction from County Counsel in providing services under this Agreement. The primary attorneys from the County Counsel's Office working with LAW FIRM with respect to this agreement shall be Stacy L. Saetta, although other deputies in the County Counsel's Office may be designated from time-to-time to work on the matter. Unless otherwise directed by County Counsel, if LAW FIRM prepares any court pleadings or COUNTY documents in the performance of services under this Agreement, including but not limited to COUNTY resolutions, staff reports, and memoranda to the Board of Supervisors, the Natividad Medical Center Board of Trustees, or other County legislative or advisory bodies, LAW FIRM shall provide such drafts to County Counsel for review and consultation prior to finalizing any such drafts.

2.04. Reporting Requirements. LAW FIRM shall provide COUNTY with such reports as may be requested by COUNTY in connection with the performance of services hereunder.

2.05. Closing Report. If this Agreement is terminated as set forth herein, or if for any reason LAW FIRM is no longer retained by COUNTY with respect to this matter, LAW FIRM shall submit a Closing Report describing the status of the matter, setting forth any information needed by another attorney to handle the matter. The Closing Report will be expeditiously submitted, together with necessary executed Substitutions of Attorneys, to County Counsel.

2.06. Oral Reports. ATTORNEY shall immediately report orally to County Counsel, in person or by telephone, any event or discovery which is of an urgent nature or requires the immediate attention of COUNTY. LAW FIRM shall promptly follow up such oral report with a Status Report or Status Update reiterating such event or discovery. LAW FIRM shall immediately advise County Counsel in writing if an actual or potential conflict of interest arises or is discovered.

### **3. COMPENSATION**

3.01. Compensation to LAW FIRM. As consideration for LAW FIRM's performance of services under this Agreement, COUNTY shall pay to LAW FIRM the fees and necessary expenses calculated in accordance with the hourly rate and expense method of billing. Fees and expenses are to be charged in accordance with the terms of this agreement and in accordance with the hourly rates for partners, associates, paralegals, and planners, if any, of LAW FIRM and

any other terms governing fees set forth in Exhibit B, attached hereto and incorporated herein by reference. COUNTY will not pay LAW FIRM for travel time.

3.02. Budget. LAW FIRM and COUNTY agree that the initial budget for services pursuant to this Agreement shall not exceed the sum of \$600,000. LAW FIRM and COUNTY shall revise the budget as necessary to reflect additional fees and expenses required for services, and this Agreement shall be amended accordingly to provide for such budget increases. Proposed budget increases must be approved by COUNTY before increased charges or expenditures are accrued. LAW FIRM shall notify the County Counsel in writing when fifty percent (50%) and seventy-five percent (75%) of the Budget has been spent. If COUNTY does not approve additional fees and expenses required by the project beyond the initial and revised budget, COUNTY hereby consents to LAW FIRM's withdrawal as co-counsel in any cases.

3.03. Maximum Liability. The maximum amount of COUNTY's liability over the full term of this Agreement (including all items paid under paragraph 3.04) shall include the initial budget amount and any revised budget amount as provided in paragraph 3.02.

3.04. Reimbursement for Expenses.

(a) COUNTY shall reimburse LAW FIRM for all actual and necessary expenses for the following items:

- (1) Deposition and transcript fees;
- (2) Filing fees;
- (3) Postage;
- (4) Consultant and expert witness fees;
- (5) Photocopying;
- (6) Computerized legal research; and
- (7) Actual travel expenses, as more fully described in (b) below; and
- (8) Other expenses when approved in advance.

(b) COUNTY will not reimburse LAW FIRM for any non-attorney staff time or overtime for secretarial, clerical, or word processing costs connected with preparing required status reports, time spent to provide information for a fee audit, or for work not authorized by COUNTY. Travel authorized by County Counsel will be reimbursed as follows: Transportation at actual fare for economy or coach class, meals and lodging not to exceed COUNTY per diem unless authorized in advance. COUNTY will not pay LAW FIRM for the travel time.

3.05. Monthly Claims by LAW FIRM. Not later than ten days after the last day of each month, LAW FIRM shall submit to COUNTY a claim, on a form or in a format approved by COUNTY, setting forth in detail the time and expense items incurred by LAW FIRM during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as COUNTY may require. The fees charges shall be calculated correctly, contain no

charges previously billed, and be consistent with the approved hourly fee schedule and budget maximum set forth in Exhibit B. The following information shall be set forth accurately in or attached to the billing invoice:

- (a) Case name, court number, County Counsel file number or other identification of subject matter for which LAW FIRM rendered services;
- (b) Staffing level, hourly rate, and detailed time and activity descriptions for each attorney, paralegal, and/or planner, including but not limited to time spent with respect to conferences, correspondence, telephone calls, hearings, meetings, research, project review, depositions, document filing, and trials; and
- (c) Invoices supporting all outside costs.

3.06. Payment of Monthly Claims by COUNTY. COUNTY, through the Office of the County Counsel, shall review LAW FIRM's claim and approve such claim either in the requested amount or in such other amount as County Counsel approves in conformity with this Agreement. County Counsel shall promptly submit such claim to Natividad. Natividad shall certify LAW FIRM's claim, either in the requested amount or in such other amount as Natividad approves in conformity with this Agreement, and thereafter County Auditor-Controller shall pay the balance of the certified claim not later than 30 days after County Auditor-Controller's receipt from Natividad of the certified claim. It is understood that CONTRACTOR's fees and charges shall be paid out of Natividad's budget and that CONTRACTOR's fees and charge shall not be paid out of the budget of the Office of the County Counsel.

3.07. Disputed Payment Amount. If for any claim COUNTY certifies a lesser amount than the amount requested, and if LAW FIRM desires to dispute the amount so certified, LAW FIRM must submit a written notice of protest to COUNTY within 20 days after LAW FIRM's receipt of the certification. The parties shall then promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.

3.08. Conflicting Payment Provisions. The provisions regarding payment set forth in this portion of the Agreement prevail over any conflicting provisions that may be found in any of the exhibits to this Agreement.

#### **4. INSURANCE**

4.01. Evidence of Coverage. Prior to commencement of this Agreement, LAW FIRM 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, LAW FIRM upon request shall make available for confidential inspection by COUNTY a certified copy of the policy or policies without declarations. This verification of coverage shall be sent to the COUNTY, unless otherwise directed. This approval



of insurance shall neither relieve nor decrease the liability of LAW FIRM.

4.02. Qualifying Insurers. All coverages, 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 COUNTY.

4.03. Insurance Coverage Requirements. LAW FIRM shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

(a) 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.

(b) 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 \$1,000,000 per occurrence.

(c) Workers' Compensation Insurance, if LAW FIRM employs others 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.

(d) Professional liability insurance. CONTRACTOR shall provide professional liability insurance in the amount of not less than 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 and shall keep such insurance in place for at least three years following the expiration or earlier termination of this Agreement.

(e) Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to COUNTY 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 LAW FIRM completes its performance of services under this Agreement.

Each liability policy shall provide that COUNTY shall be given notice in writing within thirty days of LAW FIRM being given notice by an insurer of any material endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof unless the required insurance

will be replaced without a lapse of or gap in coverage. If, with the COUNTY's permission, LAW FIRM subcontracts any of its services under this Agreement, each subcontractor shall provide a certificate of insurance to the COUNTY showing identical insurance coverage to the above requirements.

Commercial general liability policy shall provide an endorsement naming the County of Monterey, and its officers, agents, and employees as Additional Insureds with respect to liability arising out of the LAW FIRM'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 of Monterey and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the LAW FIRM'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), or their equivalent.

Prior to the execution of this Agreement by COUNTY, LAW FIRM shall file certificates of insurance with the COUNTY showing that the LAW FIRM has in effect the insurance required by this Agreement. The LAW FIRM shall file a new or amended certificate of insurance within five calendar days after a material change is made in any insurance policy, which would alter the information on the certificate then on file.

LAW FIRM 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 COUNTY, annual certificates to COUNTY. If the certificate is not received by the expiration date, COUNTY shall notify LAW FIRM and LAW FIRM shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by LAW FIRM to maintain such insurance is a default of this Agreement which entitles COUNTY, at its sole discretion, to terminate this Agreement immediately.

## **5. TERMINATION**

5.01. Termination by COUNTY. COUNTY may terminate this Agreement at any time for its convenience and without cause. Upon such termination, LAW FIRM shall promptly comply with the provisions of paragraph 2.05. COUNTY shall pay to LAW FIRM all sums then due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

5.02. Termination by LAW FIRM. LAW FIRM may terminate this agreement at any time upon giving thirty (30) days written notice to COUNTY. Upon such termination, and unless COUNTY notifies LAW FIRM in writing that it will not need a substitute co-counsel or LAW FIRM is ethically prohibited from doing so, LAW FIRM shall continue to provide such services as COUNTY may require until such time as COUNTY is able to identify a substitute co-counsel to render necessary services. COUNTY shall not unreasonably delay in identifying such substitute co-counsel or in providing written notice that it will not require a substitute co-

counsel. LAW FIRM shall also immediately comply with the provisions of paragraph 2.05. COUNTY shall pay to LAW FIRM all sums due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

## **6. GENERAL PROVISIONS**

6.01. Nonassignment. Neither party shall assign or transfer this Agreement, or any part thereof, without the written consent of the other, nor shall LAW FIRM assign any monies due or to become due to LAW FIRM hereunder without the previous written consent of COUNTY except in connection with normal financing arrangements.

6.02. Independent Contractor. Nothing in this Agreement shall be construed or interpreted to make LAW FIRM anything but an independent contractor and in all LAW FIRM's activities and operations pursuant to this Agreement, LAW FIRM shall for no purposes be considered an employee or agent of (except as attorney for) COUNTY.

6.03. Authority to Bind COUNTY. It is understood that LAW FIRM, in the performance of any and all duties under this Agreement, has no authority to bind COUNTY to any agreements or undertakings with respect to any and all persons or entities with whom LAW FIRM deals in the course of business except to carry out its duties to COUNTY hereunder.

6.04. Nondisclosure of Information. LAW FIRM shall not disclose, without express written consent of COUNTY, any information relating to COUNTY business which has been submitted by COUNTY to LAW FIRM pursuant to the services to be rendered pursuant to this Agreement. In the event that this Agreement is terminated, LAW FIRM shall immediately return to COUNTY all papers, documents and the like belonging to COUNTY.

### **6.05. Notices.**

(a) Notices permitted or required to be given to the respective parties under this Agreement shall be deemed given (1) when personally delivered to COUNTY care of the Office of the County Counsel or to LAW FIRM's principal partner contact; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the office of the Monterey County Counsel in Salinas, California, or to LAW FIRM's office), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by fax machine to the other party, to the fax number indicated below; or (4) 3 days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below.

(b) Notices mailed to the parties shall be addressed as follows:

To COUNTY:

Stacy L. Saetta  
Chief Deputy County Counsel  
Office of the County Counsel  
County of Monterey  
168 West Alisal Street, Third Floor  
Salinas, California 93901  
Phone Number: (831) 755-5045  
Fax Number: (831) 755-5283

To LAW FIRM:

Daron L. Tooch, Esq.  
King & Spalding  
633 West Fifth Street, Suite 1700  
Los Angeles, CA 90071  
Phone Number: (213) 443-4312  
Fax Number: (213) 443-4310

(c) The mailing addresses and fax numbers specified in paragraph (b) may be changed by either party, by giving notice to the other in the manner provided herein.

6.06. Subcontracting. LAW FIRM shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without prior written approval of COUNTY. Any and all subcontracts shall be subject to the provisions contained in this Agreement.

6.07. Modifications. This Agreement may be modified or amended only by written agreement of the parties. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

6.08. Nonwaiver. No covenant or condition of this Agreement can be waived except by the written consent of. Forbearance or indulgence by a party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party. Each party shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite said forbearance or indulgence.

6.09. Sole Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

6.10. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

6.11. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.

6.12. Exhibits. The following exhibits are attached hereto:

Exhibit A - Scope of Services

Exhibit B - Fees and Expenses

Exhibit C – Business Associate Agreement

## **7.0 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 engage in mediation pursuant to a mutually acceptable mediator, to be selected within 15 days of the date of the request therefor. The mediation shall be completed within 60 days of the designation of a mediator. The parties shall share the costs of the mediator, and each party shall bear its own attorneys' fees for the mediation. Any dispute not resolved by mediation shall be resolved in a federal or state court with jurisdiction including Monterey County.

Notwithstanding the foregoing, in the event of an action by 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.

**IN WITNESS WHEREOF**, COUNTY and LAW FIRM have caused this Agreement to be executed:

DATED: \_\_\_\_\_

COUNTY OF MONTEREY

By \_\_\_\_\_

Leslie J. Girard, Esq.  
County Counsel  
County of Monterey

DATED: October , 2023

KING & SPALDING LLP

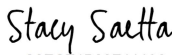
By 

Daron L. Tooch, Esq.

APPROVED AS TO FORM AND LEGALITY

LESLIE J. GIRARD, County Counsel


DATED: 10/17/2023 | 3:37 PM PDT

DocuSigned by:  
By   
C0FCE1B99F444A9...  
Stacy L. Saetta, Esq.  
Chief Deputy County Counsel

APPROVED AS TO FISCAL TERMS

RUPA SHAH, Auditor-Controller

DATED: 10/18/2023 | 7:16 AM PDT

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By   
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## **EXHIBIT A**

### **SCOPE OF SERVICES**

LAW FIRM shall provide independent legal services to the COUNTY consisting of providing legal advice and consultation regarding commercial payer, fully insured payer, and state-regulated payer reimbursement, on-going review of registration documentation, and insurance claim appeals.

## **EXHIBIT B**

### **FEES AND EXPENSES.**

COUNTY shall pay LAW FIRM the fees and necessary expenses for services performed under this Agreement. LAW FIRM'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. Negotiations for changes in attorney fees and expenses shall commence at least ninety (90) days before the end of the COUNTY's fiscal year. Changes in attorney fees and expenses are not binding unless mutually agreed upon in a writing signed by the parties. At present, LAW FIRM's hourly rates range from \$1,185 TO \$1,430 for principals in the firm, from \$170 to \$1,185 for associates, and from \$345 to \$430 for paralegals. COUNTY shall be billed at blended rates for LAW FIRM's attorneys Daron Tooch and Ariana Fuller who provide services for the COUNTY. For the first year of this Agreement, Daron Tooch and Ariana Fuller shall have a blended hourly rate of \$1,090. Senior level associates with a minimum of 7 years' experience shall have a rate of \$605. The rates shall be increased on November 1, 2024, and November 1, 2025, by 3%.

Upon prior written approval of COUNTY, LAW FIRM may, from time to time, consult with such of LAW FIRM's other lawyers, if any, on a limited basis as LAW FIRM reasonably deems prudent and necessary under the circumstances, and LAW FIRM may also, upon the written approval of COUNTY, provide additional members of, or associate lawyers employed by its firm, if any, to perform significant work under this Agreement, provided that such additional persons who are consulted or who provide significant work are compensated by COUNTY for performance of tasks under this Agreement at a rate not to exceed each such person's customary billing rate per hour for local governmental entities.

COUNTY will not pay LAW FIRM for travel time.

LAW FIRM will bill monthly for work performed and costs advanced. LAW FIRM will bill all overhead expenses, such as long-distance telephone charges, facsimile transmission charges, photocopying and delivery expenses, as costs advanced. All overhead expenses will be billed at LAW FIRM's cost.



## EXHIBIT C

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("BAA") effective December 18, 2018 ("Effective Date"), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("Covered Entity") and King & Spalding LLP ("Business Associate"), a provider of legal services (each a "Party" and collectively the "Parties").

**RECITALS**

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information ("PHI") that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the "Privacy Rule"), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the "Breach Notification Rule"), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the "Security Rule"), (collectively "HIPAA"), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below).

D. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI") shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

**AGREEMENT****1 DEFINITIONS**

1.1 All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

(a) "Breach" shall have the same meaning as "breach" as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule that compromises the privacy or security of the PHI; the term "Breach" as used in this BAA shall also mean the unlawful or unauthorized access to, Use or

Disclosure of a patient's "medical information" as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a "breach of the security of the system" under Cal. Civil Code §1798.29.

(b) "California Confidentiality Laws" shall mean the applicable laws of the State of California governing the confidentiality of PHI or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity's behalf. PHI includes EPHI.

(d) "Services" shall mean the legal services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a legal Services Agreement between Covered Entity and Business Associate to which this BAA applies.

## **2 PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or California Confidentiality Laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) Use PHI if necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted under 45

C.F.R. § 164.504(e)(4)(ii), provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that the confidentiality of the information has been breached;

(f) Use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1); and

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to the Services Agreement between the Parties, or with the prior written approval of Covered Entity.

### **3 RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

**3.1 Responsibilities of Business Associate.** With regard to its Use and/or Disclosure of PHI, Business Associate shall:

(a) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any Security Incident of which Business Associate becomes aware; and (iii) any-Breach. Such notice shall be provided within five (5) business days of Business Associate's discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. A ransomware attack shall not be considered an ineffective Security Incident and shall be reported to Covered Entity, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;

(ii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall reasonably cooperate with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) In consultation with the Covered Entity, Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, Security Incident, or Breach. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Security Incident or non-permitted access, acquisition, Use, or Disclosure. To the extent Business Associate is responsible for the Breach, Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing any legally required notification to affected individuals, appropriate government agencies, and, if necessary the media, including, but not limited to, any administrative costs associated with providing notice, and printing, mailing costs, and the costs of obtaining up to one year of credit monitoring services for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to the substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA; provided that the obligations of this BAA shall not apply to the extent that Covered Entity enters into a business associate agreement directly with Covered Entity with respect to the subject matter of this BAA;

(e) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services ("Secretary") in a time and manner designated by the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule. In addition, Business Associate shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI made available to the Secretary for purposes of determining whether Covered Entity has complied with this BAA or maintains adequate security safeguards. Notwithstanding the foregoing, Business Associate may limit the scope of the foregoing as necessary to ensure that Business Associate does not breach the attorney-client privilege or any other confidentiality obligation with respect to information maintained by Business Associate on behalf of Covered Entity or its other clients;

(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) days of receiving a written request from Covered Entity, provide to Covered

Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the Disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the Disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI Disclosed; and (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure, or such other information as set forth in 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within ten (10) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) Subject to Section 4.4 below, return to Covered Entity within thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;

(h) Use reasonable efforts to disclose to its Subcontractors or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) If all or any portion of the PHI is maintained in a Designated Record Set:

(i) Upon ten (10) days' prior written request from Covered Entity, provide access to the PHI to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; and

(ii) Upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(j) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(k) Unless prohibited by law, notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to challenge the validity of such request, the Business Associate shall reasonably cooperate with the Covered Entity in such challenge; and

(l) Maintain policies and procedures materially in accordance with State Confidentiality Laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.



### **3.2 Business Associate Acknowledgment.**

(a) Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

(b) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA and the HITECH Act, as applicable to Business Associate. Business Associate shall comply with all California Confidentiality Laws as applicable to Business Associate, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with NMC's privacy practices, as stated in NMC's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online at: <http://www.natividad.com/quality-and-safety/patient-privacy>. Business Associate agrees to review the NMC Notice of Privacy Practices at this URL at least once annually while doing business with NMC to ensure it remains updated on any changes to the Notice of Privacy Practices NMC may make.

**3.3 Responsibilities of Covered Entity.** Covered Entity shall, with respect to Business Associate:

(a) Provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) Notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI;

(c) Notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the Use or Disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI; and

(d) Notify Business Associate of any restrictions on Use and/or Disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

(e) Use reasonable efforts to limit disclosures of PHI to Business Associate to only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

#### 4 **TERM AND TERMINATION**

**4.1 Term.** This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

**4.2 Termination.** If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) immediately terminate this BAA and any underlying Services Agreement; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the satisfaction of Covered Entity.

**4.3 Automatic Termination.** This BAA shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

**4.4 Effect of Termination.** Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its Subcontractors. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (v) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities. The Parties hereby acknowledge and agree that, except in certain limited circumstances, in the event of the termination of the attorney-client relationship between Covered Entity and Business Associate, it will not be feasible for Business Associate to return to Covered Entity or destroy PHI, and Business Associate will need to retain such PHI so that Business Associate can substantiate its Services, for quality control, risk management, and insurance requirements, in accordance with Business Associate's record retention policy. Business Associate and its subcontractors, if any, shall follow the restrictions of this Agreement regarding PHI retained by them, respectively, and shall limit further Uses and Disclosures to those purposes that make return or destruction infeasible.

## 5 MISCELLANEOUS

**5.1 Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

**5.2 Amendments; Waiver.** This BAA may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of HIPAA, the HITECH Act, or California Confidentiality Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to the revised obligations. Further, no provision of this BAA shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

**5.3 No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**5.4 Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

	King & Spalding, LLP
Attn:	Daron Toooh
	633 West 5th Street Suite 1700
	Los Angeles, CA 90071
Phone:	(213) 443-4312
Fax:	(213) 443-4310

If to Covered Entity, to:

Natividad Medical Center  
 Attn: Compliance/Privacy Officer  
 1441 Constitution Blvd.  
 Salinas, CA 93906  
 Phone: 831-755-4111  
 Fax: 831-755-6254



Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

**5.5 Counterparts; Facsimiles.** This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

**5.6 Relationship of Parties.** Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**5.7 Choice of Law; Interpretation.** This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

**5.8 Applicability of Terms.** This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

**5.9 Insurance.** In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, a commercially standard commercial general liability insurance policy that provides coverage for Business Associate's activities **under this BAA**, subject to the terms, conditions, exclusions, and limitations of the policy. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

**5.10 Legal Actions.** Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual action, proceeding, regulatory or governmental orders or actions, that becomes known to it that may affect the interests of Covered Entity under this BAA or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual legal action or proceeding, except

to the extent prohibited by law or to the extent doing so would compromise Business Associate's ethical duty of confidentiality or loyalty.

**5.11 Audit or Investigations.** Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any audit, complaint review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws and Business Associate's obligations to Covered Entity under this BAA.

**5.12 Attorney-Client Relationship.** Notwithstanding anything to the contrary contained herein, the Parties, recognizing that Business Associate serves as legal counsel to Covered Entity, hereby agree that nothing contained in this Agreement:

(a) Waives the attorney-client, work-product, or any other privilege that may be invoked by, or is applicable to, either Party;

(b) Imposes any duties or obligations on Business Associate that are inconsistent with Business Associate's duties and obligations to Covered Entity as a client of Business Associate, including, without limitation, any obligation of confidentiality or other obligation imposed on Business Associate under ethical rules applicable to the Parties' attorney-client relationship or otherwise at law; or

(c) Limits either Party's right or ability to adequately conduct discovery in any arbitration or litigation proceeding.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf as of the Effective Date.

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

By: Daron Toech

By: [Signature]

Print Name Daron Toech

Print Name: Gary R. Gray

Print Title Partner

Print Title: Chief Executive Officer

Date: 12/18/18

Date: 12/18/18

**..Title**

- a. Authorize the County Counsel to execute an Agreement for Specialized Attorney Services (“Agreement”) with King and Spalding LLP for independent consulting and legal services with respect to healthcare matters at Natividad Medical Center (“Natividad”), for an amount not to exceed \$600,000 with an agreement term November 1, 2023, through October 31, 2026; and
- b. Authorize the Deputy Purchasing Agent for Natividad or his designee to execute up to three (3) future amendments to this Agreement where in total the amendments do not exceed 10% (\$60,000) of the agreement amount, for a revised total contract amount of \$660,000, and do not significantly change the scope of work.

**..Report**

**RECOMMENDATION:**

**It is recommended the Board of Supervisors:**

- a. Authorize the County Counsel to execute an Agreement for Specialized Attorney Services (“Agreement”) with King and Spalding LLP for independent consulting and legal services with respect to healthcare matters at Natividad Medical Center (“Natividad”), for an amount not to exceed \$600,000 with an agreement term November 1, 2023, through October 31, 2026; and
- b. Authorize the Deputy Purchasing Agent for Natividad or his designee to execute up to three (3) future amendments to this Agreement where in total the amendments do not exceed 10% (\$60,000) of the agreement amount, for a revised total contract amount of \$660,000, and do not significantly change the scope of work.

**SUMMARY/DISCUSSION:**

King & Spalding is a national law firm with one of the largest groups of attorneys with an emphasis in its healthcare law group on managed care. The firm routinely handles business, regulatory, litigation, arbitration, mediation, consulting and other managed care issues. The County uses the firm’s expertise in managed care litigation, payer contract disputes and negotiations, the Affordable Care Act, California’s Health & Safety Code, and the Knox-Keene Act.

**OTHER AGENCY INVOLVEMENT:**

County Counsel has reviewed and approved this Agreement as to legal form, and the Auditor-Controller has reviewed and approved as to payment provisions. This Agreement has also been reviewed and approved by Natividad’s Finance Committee and by its Board of Trustees on October 13, 2023.

**FINANCING:**

The cost for this agreement is \$600,000, of which \$200,000 is included in the Fiscal Year 2023-2024 Adopted Budget. Amounts for the remaining years of the agreement will be included in those budgets as appropriate. There is no impact to the General Fund.

**BOARD OF SUPERVISORS STRATEGIC INITIATIVES:**

The services rendered in this agreement provide legal consulting services, as needed, with respect to healthcare matters; the outcome of which contributes to assisting Natividad run efficient business operations.

- ☐ Economic Development
- ☒ Administration
- ☐ Health and Human Services
- ☐ Infrastructure
- ☐ Public Safety

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

Approved by: Charles R. Harris, MD, Chief Executive Officer, 783-2504

Attachments:

King and Spalding LLP Agreement

Attachments on file with the Clerk of the Board

DRAFT