

MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING:	March 11, 2008	AGENDA NO.:
SUBJECT:	a. Authorize the Purchasing Manager for Monterey County to execute an Agreement with JLG Medical Transcription Services for Medical Records, Pathology and Diagnostic Imaging Transcription Services at Natividad Medical Center in an amount not to exceed \$1,800,000 for the term April 1, 2008 through March 31, 2011; and b. Authorize the Purchasing Manager to issue a Purchase Order in the amount not to exceed \$50,000 for the period April 1, 2008 through June 30, 2008.	
DEPARTMENT:	Natividad Medical Center	

RECOMMENDATION:

It is recommended that the Board of Supervisors;

- a. Authorize the Purchasing Manager for Monterey County to execute an Agreement with JLG Medical Transcription Services for Medical Records, Pathology and Diagnostic Imaging Transcription Services at Natividad Medical Center in an amount not to exceed \$1,800,000 for the term April 1, 2008 through March 31, 2011; and
- b. Authorize the Purchasing Manager to issue a Purchase Order in the amount not to exceed \$50,000 for the period April 1, 2008 through June 30, 2008.

SUMMARY:

JLG Medical Transcription Services will provide remote transcription of Medical Records, Radiology and Pathology and routine medical record reports for Natividad Medical Center (NMC). Outside medical transcription services are required as NMC does not have sufficient personnel to meet its medical transcription needs. This contract was awarded per the Request for Proposal (RFP) #10035 which will replace an existing remote transcription vendor.

DISCUSSION:

Patient-specific data and information are contained in the medical record to facilitate patient care, Treatment, and services; serve as a financial and legal record; aid in research; support decision analysis; and guide professional and hospital performance improvement. Documentation must reflect the care rendered to the patient and the patient's response. The health record is considered a legal document and a business record as it records events at or about the time they happen. Moreover, timeliness and legibility are two of the main areas of focus for payer, accreditation and licensure bodies. There are federal, state and accrediting agency requirements for when patient information is available to caregivers. Additionally, insurance companies may require copies of the reports before payment of the patient's stay. Delays in the turnaround time can result in delayed and/or reduced payments.

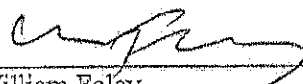
OTHER AGENCY INVOLVEMENT:

The Agreement has been reviewed and approved by County Counsel, Risk Management, The Auditor/Controllers office and the Natividad Medical Center's Board of Trustees.

FINANCING:

The estimated cost is anticipated to not exceed \$1,800,000 over the term of the Agreement. The 07/08 additional cost is anticipated not to exceed \$50,000. This action will not require any additional unbudgeted General Fund subsidy in FY 2007-08.

Prepared by:
Sid Cato, Management Analyst
Date



William Foley
Chief Executive Officer

Attachments: Agreement

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

- a. Authorize the Purchasing Manager for Monterey County to execute an Agreement with JLG Medical Transcription Services for Medical Records, Pathology and Diagnostic Imaging Transcription Services at Natividad Medical Center in an amount not to exceed \$1,800,000 for the term April 1, 2008 through March 31, 2011; and)
- b. Authorize the Purchasing Manager to issue a Purchase Order in the amount not to exceed \$50,000 for the period April 1, 2008 through June 30, 2008.)

Upon motion of Supervisor _____, seconded by Supervisor _____, and carried by those members present, effective March 11, 2008 the Board hereby:

- a. Authorizes the Purchasing Manager for Monterey County to execute an Agreement with JLG Medical Transcription Services for Medical Records, Pathology and Diagnostic Imaging Transcription Services at Natividad Medical Center in an amount not to exceed \$1,800,000 for the term April 1, 2008 through March 31, 2011; and
- b. Authorizes the Purchasing Manager to issue a Purchase Order in the amount not to exceed \$50,000 for the period April 1, 2008 through June 30, 2008.

PASSED AND ADOPTED this 11th day of March 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page _____ of the Minute Book _____, on _____ 2008.

Dated:

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey, State of California.

By _____
Deputy

COUNTY OF MONTEREY AND NATIVIDAD MEDICAL CENTER
AGREEMENT FOR PROFESSIONAL SERVICES (MORE THAN \$100,000)*

This Professional Services Agreement ("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 ("County"), a political subdivision of the State of California and JLG Medical Transcription Services, a Florida Corporation (hereinafter "Contractor").

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

1. **SERVICES TO BE PROVIDED.** NMC hereby engages Contractor to perform, and Contractor hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The services are generally described as follows: Provide medical dictation and transcription services for Natividad Medical Center.

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 \$1,800,000.00 for the Term of the Agreement. Should NMC's utilization of services exceed ninety-five (95%) this estimated sum, Contractor will notify NMC that authorization to exceed the maximum sum will be required based on NMC's continued utilization of services.

3. **TERM OF AGREEMENT.** The effective date ("EFFECTIVE DATE") of this Agreement shall be the date on which the Agreement is fully executed by the parties. Services shall commence on a mutually agreeable date, generally within ninety (90) days of the Effective Date ("COMMENCEMENT DATE"), following the completion of the Implementation process. The term of this Agreement is from the Commencement Date to three (3) years following the Commencement Date, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by Contractor, NMC and County, and with County signing last, and Contractor may not commence work before County signs this Agreement.

4. **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

Exhibit B: ASCII Character Chart

Exhibit C: HIPAA Business Associate Agreement

5. PERFORMANCE STANDARDS.

5.01. 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 the County, or immediate family of an employee of the County.

5.02. 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.

5.03. 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 County or 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.

6.01. 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 the amounts claimed, and such other information pertinent to the invoice as NMC may require. The Contract Administrator or his/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's Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. Contractor shall not receive reimbursement for travel expenses unless set forth in this Agreement; and then only in accordance with any applicable County policies.

7. TERMINATION.

7.01. 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. Should NMC exercise the right to terminate this Agreement without cause during the first eighteen (18) months of this Agreement, NMC will reimburse Contractor One Thousand Dollars (\$1,000.00) per month for all months remaining in the first eighteen months of the Agreement in recognition of Contractor's start-up costs and efforts on NMC's behalf.

7.02. 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 that NMC deems proper. The cost to NMC shall be deducted from any sum due the Contractor under this Agreement.

8. **INDEMNIFICATION.** Contractor shall indemnify, defend, and hold harmless NMC, the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Contractor's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of NMC. "Contractor's performance" includes Contractor's action or inaction and the action or inaction of Contractor's officers, employees, agents and subcontractors.

9. INSURANCE.

- 9.01 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.

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 work under this Agreement until it has obtained all insurance required and such insurance has been approved by NMC. The approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 9.02 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 Purchasing Manager.

- 9.03 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:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform 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.

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

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.

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

Workers' Compensation Insurance, if Contractor 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.

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

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.

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

- 9.04. Other Insurance Requirements. 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.

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 insureds 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.

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.

Prior to the execution of this Agreement by NMC, Contractor shall file certificates of insurance with NMC's contract administrator and NMC's Contracts/Purchasing Division, 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 (5) 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.

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 Contract Administrator and NMC's Contracts/Purchasing Division. 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 this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

- 10.01. 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.

10.02. 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.

10.03. 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.

10.04. 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 the County or as part of any audit of the County, 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.

10.05. Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others 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 County.

11. **NON-DISCRIMINATION.** 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, fully 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.

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** 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, to the extent applicable to Contractor as a subgrantee under 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.

13. **INDEPENDENT Contractor.** 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 the County or NMC. No offer or obligation of permanent employment with the County or Hospital or any particular County department or agency is intended in any manner, and Contractor shall not become entitled by virtue of this Agreement to receive from County 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 County and NMC harmless from any and all liability which County or NMC may incur because of Contractor's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to NMC and Contractor's contract administrators at the addresses listed below:

For NMC:

Natividad Medical Center
1441 Constitution Boulevard
Salinas, California 93906
Attention: Contracts/Purchasing Manager

Natividad Medical Center
1441 Constitution Boulevard
Salinas, California 93906
Attention: Medical Records Director

For Contractor:

JLG Medical Transcription Services
141 Stevens Avenue, Suite 15
Oldsmar, Florida 34677
Attention: Chief Operating Officer

15. MISCELLANEOUS PROVISIONS.

- 15.01. 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.
- 15.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 15.03. 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.
- 15.04. 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.
- 15.05. Disputes. Contractor shall continue to perform under this Agreement during any dispute.
- 15.06. 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.
- 15.07. 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.

- 15.08. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12. 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.
- 15.13. 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.
- 15.14. 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.
- 15.15. Authority. Any individual executing this Agreement on behalf of NMC or the Contractor represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16. Integration. This Agreement, including the exhibits, represent 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 the Contractor as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17. 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.

This space is left blank, intentionally.

IN WITNESS WHEREOF, County, NMC and Contractor have executed this Agreement as of the day and year written below.

NMC
By: [Signature]
Purchasing Manager
Date: 3-24-08
By: [Signature]
Department Head (if applicable)
Date: 2-6-08
By: _____
Board of Supervisors (if applicable)
Date: _____
Approved as to Legal Form
By: W. Allen Bidwell
Deputy County Counsel ²
Date: 02-08-2008

Approved as to Fiscal Provisions

By: _____
Date: RISK MANAGEMENT
COUNTY OF MONTEREY
Approved as to Indemnity/
Insurance Language
By: [Signature]
Risk Management ¹
By: _____
Date: 2/15/08

CONTRACTOR

JLG Medical Transcription Services
Contractor's Business Name*
By: [Signature]
(Signature of Chair, President, or Vice President)
Philip W. Williams, President
Name and Title
Date: 2/1/08
By: [Signature]
Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*
JAMES M. O'HARE Treasurer
Name and Title
Date: 2/1/08

*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 an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹ Approval by Risk Management is necessary only if changes are made in paragraph 8 or 9.

² Approval by County Counsel is necessary only if changes are made to the standard provisions of the PSA.

EXHIBIT A
PAYMENT PROVISIONS/SERVICE DESCRIPTION

Section 1: PAYMENT PROVISIONS

Paragraph 1.1 **Payment to Contractor:** NMC shall pay Contractor a payment of \$0.0027 for each unit of pricing, as set forth below, transcribed for NMC for the first year of the Agreement. The payment shall be increased two and one-half percent (2.5%) after eighteen months of the Initial Term. Contractor may adjust the payment as defined above for any Renewal Term with at least sixty (60) days prior written notice pursuant to Paragraph 14.

1.1.1 **Unit of Pricing:** The unit of pricing for this Agreement is a visible black character. Any ASCII character 33-126 as set forth in Exhibit B attached hereto in the formatted document is counted. This counting methodology includes all header and footer information necessary to derive the final appearance and content of the document and to format the electronic document process.

1.1.2 **Format Changes:** Before the Commencement Date, Contractor shall set up formats for all report types as required by NMC at no charge to NMC. After NMC approves such report formats any additional format revisions shall be charged at a rate of Two Hundred Fifty Dollars (\$250) per report format change. Contractor shall provide NMC with the opportunity to review and revise any and all report formats on an annual basis without charge. This price shall not change during the Term of this Agreement and any renewals or extensions thereof. Report formats are defined as the template(s) that specify and outline data elements and standard headings in a report type, defines the printed appearance and drives the electronic interface.

1.1.3 **Off-Shore Labor/ Speech Recognition Discount:** Contractor can provide a blend of off-shore labor and domestic transcription labor and/or apply back-end speech recognition combined with Contractor editing combined with domestic quality assurance, customer service and technical support. A discount of \$0.00015 is offered for this blend of off-shore and domestic transcription labor and/or back-end speech recognition combined with Contractor editing. NMC shall notify Contractor in writing pursuant to Paragraph 14 of NMC's desire to implement this option and Contractor will implement within sixty (60) days. This discount will apply to all volume going forward once the blended labor option and/or speech recognition option is implemented.

Paragraph 1.2 **Statement/Invoice:** Contractor will provide a statement/invoice summarizing actual services rendered and corresponding charges twice each month. Statement/Invoice periods are from the first through the fifteenth of the month and from the sixteenth to the end of the month.

Paragraph 1.3 **Payment:** NMC shall pay Contractor the amount of each invoice within thirty (30) days from the date of receipt of the invoice.

Paragraph 1.4 **Material Changes:** The terms of the Agreement are based on an approximate annual volume of 165 million visible black characters, and seven day per week coverage. Should NMC materially change the expected transcription volume by more than twenty percent (20%) or request services in addition to those described herein, Contractor and NMC must agree in writing regarding any additional fees or adjustments that Contractor may charge for such material changes, reductions in volume or additional services.

Paragraph 1.5 **Exclusive Contract:** During the Term of this Agreement and any Renewal Terms thereof, NMC agrees that it will not contract with any other party to perform medical dictation and transcription work at Natividad Medical Center other than work that Contractor can not or will not perform.

Section 2: SERVICE DESCRIPTION

Paragraph 2.1 **General Service Description:** Contractor will provide to NMC dictation and transcription services twenty-four (24) hours per day. The service shall include the provision of dictation services through use of off-site dictation system maintained by Contractor; the secured electronic transfer of voice files to the transcription and document management system for processing; the transcription of those reports using transcription and document management system maintained by Contractor; the review of a sampling of those reports by proofreaders; the electronic delivery of such reports to NMC; provision to NMC of access to transcribed reports for recall, editing and printing; and monitoring and reporting capabilities.

Included:

- Turnaround service as herein defined
- Dictation Capture Management using JLG-Dictate as the voice capture solution
- Off-site transcription personnel
- Web-based document access, distribution and reporting with JLG-Transcribe, JLG-Quality, JLG-Access and JLG-Distribute
- Reprints and electronic files of completed reports
- Communication costs associated with transmitting completed documents
- JLG Interface Fees for bi-directional Interface with HIS System (ADT download/document upload)
- Employment opportunities for existing NMC transcription personnel

Excluded:

- Dictation communication costs (local)
- Telephone stations for physicians (standard touch tone phones)
- Facility high speed Internet connectivity
- Network connections and cabling (if desired)
- Editing reports which were originally typed as dictated
- Workstations/servers, printers, NMC equipment maintenance and printer supplies

Paragraph 2.2 **Education and Training:** Contractor will provide training to NMC personnel on the use of the dictation system and document management systems. Dictation instruction cards for dictator will be provided by Contractor.

Paragraph 2.3 **Quality Assurance:** Contractor will maintain a staff of qualified Quality Assurance Specialists whose responsibilities are to assure the use of appropriate formats and the medical accuracy and consistency of transcribed reports. Transcribed reports are monitored on an ongoing basis

2.3.1 **Audits:** Contractor will perform a monthly quality review by randomly sampling reports and applying review criteria and corresponding point values specified herein for detected errors. The error rate is calculated by dividing the total number of error points by the total number of lines reviewed. Contractor will provide Natividad Medical Center with a copy of the monthly audit report and a copy of audited transcribed reports with errors highlighted. If Natividad Medical Center does not feel the randomly selected reports represent the quality of work produced by the Contractor, another random sample may be selected by Natividad Medical Center for the Contractor to review.

Type of Error	Point Value
Error affecting Patient Care	2.0
Medical text omission/error	1.0
Other text omission/error	1.0
Production software error	1.0
Spelling – medical/English	1.0
Format	1.0
Grammar	0.5
Punctuation/style	0.5

- 2.3.2 **Performance Guarantee:** Contractor will offer the following performance guarantee regarding quality performance following an initial grace period of ninety (90) days. Should the error rate exceed two percent (2%), then charges for the month shall be reduced by two percent (2%).

Paragraph 2.4 **Turnaround Times:** Reports will be processed according to the following turnaround time schedule. These turnaround times are applicable seven days per week and measured from the time at which the dictation of the report is available to Contractor until the time the report is available to NMC.

<u>Report Type</u>	<u>Turnaround Time</u>
Immediate/STAT Reports	2 hours
Transfer Summary	4 hours
Emergency Medicine Reports	4 hours
History and Physical Reports (Inpatient and Outpatient)	6-8 hours
Psychiatric Evaluations	12 hours
Consultations (Inpatient and Outpatient)	12 hours
Progress Notes	12 hours
Clinic Notes	12 hours
Outpatient Letters	12 hours
Operative Reports	12 hours
Procedure Notes	12 hours
Diagnostic Studies	12 hours
Radiology Reports	6-8 hours
Cardiopulmonary Reports	12 hours
Pathology Reports	12 hours*
Discharge Summary Report	24 hours
Medical Legal	24 hours
Letters	24 hours

*Afternoon dictation up to 6:00 pm, transcription back by 8:00 am

- 2.4.1 **Performance Guarantee:** Contractor will offer the following performance guarantee regarding turnaround time performance, following an initial grace period of sixty (60) days. If the average monthly turnaround time for any report type falls above five percent (5%) of the standard, then charges for that report type shall be reduced by two percent (2%) for that month. If the average monthly turnaround time for any report type falls above ten percent (10%) of the standard, then charges for that report type shall be reduced five percent (5%) that month. However, if a report does not meet turnaround time standards because of dictation system malfunction; telephone/communication line malfunction; poor dictation quality; incorrect coding of required information by dictator; dictation surge of greater than one hundred twenty percent (120%) of normal volume or computer equipment failure, the report will not count in the turnaround time average calculation.

2.4.2

STAT Services: STAT transcription services are available with a one to four (1-4) hours turnaround time. STAT reports are reports containing urgent information needed for immediate patient care and Contractor has been advised of the status. STAT services are available at no additional charge if the total volume of STAT reports is less than seven and one-half percent (7.5%) of total volume. Should STAT volume exceed seven and one-half percent (7.5%) of total volume, STAT reports over the seven and one-half percent (7.5%) threshold will be charged at a rate of one and one-half (1.5) times the unit of pricing rate as defined in Paragraph 3 of the Agreement. The STAT volume surcharge (if applicable) will only apply to STAT reports over the seven and one-half percent STAT report threshold and not caused by Contractor not meeting required Turnaround Times.

EXHIBIT C
HIPAA BUSINESS ASSOCIATE AGREEMENT

This Agreement, hereinafter referred to as "**Agreement**", is made effective **January 1, 2008** 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 **JLG Medical Transcription Services** 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 Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule and is hereby referred to as the "**Service Agreement**"; 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, 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 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. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, 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 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

EXHIBIT B ASCII CHARACTER CHART

Dec	Hex	Oct	Char	Dec	Hex	Oct	Char	Dec	Hex	Oct	Char	Dec	Hex	Oct	Char
0	0	000	NUL (null)	32	20	040	space	64	40	100	@	96	60	140	6
1	1	001	SOH (start of heading)	33	21	041	!	65	41	101	A	97	61	141	a
2	2	002	STX (start of text)	34	22	042	"	66	42	102	B	98	62	142	b
3	3	003	ETX (end of text)	35	23	043	#	67	43	103	C	99	63	143	c
4	4	004	EOF (end of transmission)	36	24	044	\$	68	44	104	D	100	64	144	d
5	5	005	ENQ (enquiry)	37	25	045	%	69	45	105	E	101	65	145	e
6	6	006	ACK (acknowledge)	38	26	046	&	70	46	106	F	102	66	146	f
7	7	007	BEL (bell)	39	27	047	'	71	47	107	G	103	67	147	g
8	8	010	BS (backspace)	40	28	050	(	72	48	110	H	104	68	150	h
9	9	011	TAB (horizontal tab)	41	29	051	)	73	49	111	I	105	69	151	i
10	A	012	LF (NL line feed, new line)	42	2A	052	*	74	4A	112	J	106	6A	152	j
11	B	013	VT (vertical tab)	43	2B	053	+	75	4B	113	K	107	6B	153	k
12	C	014	FF (NF form feed, new page)	44	2C	054	,	76	4C	114	L	108	6C	154	l
13	D	015	CR (carriage return)	45	2D	055	-	77	4D	115	M	109	6D	155	m
14	E	016	SO (shift out)	46	2E	056	.	78	4E	116	N	110	6E	156	n
15	F	017	SI (shift in)	47	2F	057	/	79	4F	117	O	111	6F	157	o
16	10	020	DLE (data link escape)	48	30	060	0	80	50	120	P	112	70	160	p
17	11	021	DC1 (device control 1)	49	31	061	1	81	51	121	Q	113	71	161	q
18	12	022	DC2 (device control 2)	50	32	062	2	82	52	122	R	114	72	162	r
19	13	023	DC3 (device control 3)	51	33	063	3	83	53	123	S	115	73	163	s
20	14	024	DC4 (device control 4)	52	34	064	4	84	54	124	T	116	74	164	t
21	15	025	NAK (negative acknowledge)	53	35	065	5	85	55	125	U	117	75	165	u
22	16	026	SYN (synchronous idle)	54	36	066	6	86	56	126	V	118	76	166	v
23	17	027	ETB (end of trans. block)	55	37	067	7	87	57	127	W	119	77	167	w
24	18	030	CAN (cancel)	56	38	070	8	88	58	130	X	120	78	170	x
25	19	031	EM (end of medium)	57	39	071	9	89	59	131	Y	121	79	171	y
26	1A	032	SUB (substitute)	58	3A	072	:	90	5A	132	Z	122	7A	172	z
27	1B	033	ESC (escape)	59	3B	073	;	91	5B	133	[	123	7B	173	{
28	1C	034	FS (file separator)	60	3C	074	<	92	5C	134	\	124	7C	174	|
29	1D	035	GS (group separator)	61	3D	075	=	93	5D	135	]	125	7D	175	}
30	1E	036	RS (record separator)	62	3E	076	>	94	5E	136	^	126	7E	176	~
31	1F	037	US (unit separator)	63	3F	077	?	95	5F	137	_	127	7F	177	DEL

Source: www.asciitable.com

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 and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule 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 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 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;

(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 use 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 use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure 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.

V. MISCELLANEOUS

Except as expressly stated herein or in the HIPAA Privacy Rule, 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, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

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: 2-6-08

BUSINESS ASSOCIATE:

By: 

Title: PRESIDENT

Date: 2/1/08