

Natividad MEDICAL CENTER
County of Monterey Agreement for Services
(Not to Exceed \$100,000)

This Agreement (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC"), and **Stryker Sales Corporation dba Stryker Instruments** hereinafter "CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the "Parties.").

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

GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED; NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of the Agreement. The services are generally described as follows: **Preventative Maintenance on Power Tools and Neptune Equipment**

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 **\$69,789.**

TERM OF AGREEMENT; the term of this Agreement is from **May 1, 2018** through **April 30, 2020** unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

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

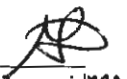
SCOPE OF SERVICES AND ADDITIONAL PROVISIONS/EXHIBITS; the following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Addendum No. 1 (Modification to certain terms and conditions)

Exhibit A: Scope of Services/Payment Provisions
Exhibit A-1: Product Service Plan – Equipment Inventory
Exhibit B: Additional Risk Provisions

1. PERFORMANCE STANDARDS:

- 1.1. ~~CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC. (See addendum No. 1)~~
- 1.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.


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Counsel
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Stryker

2. PAYMENT CONDITIONS:

- 2.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. NMC (Monterey County) does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 2.2. ~~Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR. (See addendum No. 1)~~
- 2.3. ~~CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. (See addendum No. 1)~~
- 2.4. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

3. TERMINATION:

- 3.1. ~~During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination. (See addendum No. 1)~~
- 3.2. ~~NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement. (See addendum No. 1)~~
- 3.3. NMC's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

4. INDEMNIFICATION:

- 4.1. ~~CONTRACTOR shall indemnify, defend, and hold harmless NMC (hereinafter "County"), its officers, agents and employees from any claim, liability, loss injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The CONTRACTOR shall reimburse the County for all costs, attorneys' fees,~~


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~~expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement. (See addendum No. 1)~~

5. INSURANCE:

5.1. Evidence of Coverage:

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 5.2. Qualifying Insurers: All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

- 5.3. 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:

- 5.4. Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

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

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

- 5.5. Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

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

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

- 5.6. Workers' Compensation Insurance, If CONTRACTOR employs other in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

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

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

- 5.7. ~~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. (See addendum No. 1)~~

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

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

6. Other Insurance Requirements:

- 6.1. All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.
- 6.2. ~~Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements. (See addendum No. 1)~~
- 6.3. **Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance.**
- 6.4. ~~Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. (See addendum No. 1)~~
- 6.5. CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates


NMC
County Counsel

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to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

7. RECORDS AND CONFIDENTIALITY:

- 7.1. Confidentiality: CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.
- 7.2. NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.
- 7.3. Maintenance of Records: ~~CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved. (See addendum No. 1)~~
- 7.4. Access to and Audit of Records: ~~NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement. (See addendum No. 1)~~
8. Royalties and Inventions: ~~NMC shall have a royalty free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC. (See addendum No. 1)~~
9. 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, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.


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10. 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, 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.
11. 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 NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.
12. Notices: Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

NATIVIDAD MEDICAL CENTER:

Natividad medical Center
Attn: Contracts Division
Natividad Medical Center
1441 Constitution Blvd
Salinas, CA. 93906
FAX: 831-757-2592

CONTRACTOR:

Name: Taylor Killeen
Attn: Procure
Address: 1901 Romence Parkway Rd
City, State, Zip: Kalamazoo, MI 49002
FAX: _____
Email: taylor.killeen@stryker.com

MISCELLANEOUS PROVISIONS:

- 13.1 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 13.2 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 13.3 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 13.4 Contractor. The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 13.5 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.

- 13.6 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 13.7 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 13.8 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 13.9 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 13.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 13.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 13.12 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.
- 13.13 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.
- 13.14 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.
- 13.15 Integration. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 13.16 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

Signature Page to follow

NATIVIDAD MEDICAL CENTER

By: _____

Gary R. Gray, DO, CEO

Date: _____

APPROVED AS TO LEGAL PROVISIONS

By: _____

Monterey County Deputy County Counsel

Date: 4-30-18

APPROVED AS TO FISCAL PROVISIONS

By: _____

Monterey County Deputy Auditor/Controller

Date: 5-3-18

CONTRACTOR

Stryker Sales Corporation dba Stryker Instruments

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

Taylor Killeen

Signature of Chair, President, or Vice-President

Taylor Killeen Procure Contract Coordinator

Name and Title

Date: 4/17/18

By: _____

(Signature of Secretary, Asst. Secretary, CFO, Treasurer
or Asst. Treasurer)

Name and Title

Date: _____

*****Instructions:**

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

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

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

ADDENDUM NO. 1

To Agreement by and between **Stryker Sales Corporation dba Stryker Instruments** and
The County Of Monterey On Behalf Of Natividad Medical Center
For Preventative Maintenance On Power Tools And Neptune Equipment Services

This Addendum No. 1 amends, modifies, and supplements the County of Monterey Agreement for Services (hereinafter "Agreement") by and between Stryker Instruments, (hereinafter "CONTRACTOR") and the County of Monterey, on behalf of Natividad Medical Center (hereinafter "NMC"). This Addendum #1 has the full force and effect as if set forth within the Terms. To the extent that any of the terms or conditions contained in this Addendum #1 may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum #1 shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, NMC and CONTRACTOR agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

- I. Paragraph 1.1, under "PERFORMANCE STANDARDS", shall be amended to:**
 - 1.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement have all training, experience, and to the extent applicable, licensing necessary to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
- II. Paragraph 2.2, under "PAYMENT CONDITIONS", shall be amended to:**
 - 2.2 If desired by CONTRACTOR, negotiations for an extension or renewal of this Agreement, and any rate changes in connection therewith, shall be commenced by CONTRACTOR, a minimum of ninety (90) days prior to the expiration of the Agreement. No rate changes, extension or renewal of this Agreement are binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.
- III. Paragraph 2.3, under "PAYMENT CONDITIONS", shall be amended to:**
 - 2.3 Invoices shall be sent as per the payment provisions set forth in Exhibit A (Scope of Services/ Payment Provisions) of this Agreement, and CONTRACTOR shall submit to the Contract Administrator an invoice on a form reasonably acceptable to NMC. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor Controller shall pay the amount certified within thirty (30) days of receipt of receiving the certified invoice.

IV. Paragraph 3.1, under "TERMINATION", shall be amended to:

3.1 During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

V. Paragraph 3.2, under "TERMINATION", shall be amended to:

3.2 NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" shall mean the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement. If either party materially breaches the Agreement or any of its provisions, the other party may terminate the Agreement and any applicable ProCare Plan as it pertains to the breaching party after notifying the breaching party in writing and the breaching party fails to cure such breach no later than ten (10) business days after receiving written notice of default.

VI. Paragraph 4.1, under "INDEMNIFICATION", shall be amended to:

4.1 CONTRACTOR shall indemnify, defend, and hold harmless NMC (hereinafter "County"), its officers, agents and employees from any third party claims relating to or arising out of (1) any injury (including death) to any person arising from CONTRACTOR'S providing services pursuant to this Agreement, not caused by the gross negligence or willful misconduct or omission of County, or (2) any property damage caused by the gross negligence or willful misconduct or omissions by CONTRACTOR or CONTRACTOR'S employees agents, or contractors. The foregoing indemnification will not apply to any liability arising from (i) an injury due to the negligence of any person other than CONTRACTOR'S employee or agent, (ii) the failure of any person other than CONTRACTOR'S employee or agent to follow any instructions outlined in the labeling, manual, and/or instructions for use of a product(s), or (iii) the use of any product or part not purchased from CONTRACTOR or product or part that has been modified, altered or repaired by any person other than CONTRACTOR'S employee or agent. Except as specifically provided herein, CONTRACTOR is not responsible for any losses or injuries arising from the selection, manufacture, installation, operation, condition, possession, or use of a product. County agrees to hold CONTRACTOR harmless from and indemnify CONTRACTOR for any claims or losses or injuries arising from (i), (ii), or (iii) above arising as a result of County's or its employees', representatives' or agents' actions.

VII. Paragraph 5.7., under "PROFESSIONAL LIABILITY INSURANCE", shall be omitted in its entirety.

VIII. Paragraph 6.2, under "OTHER INSURANCE REQUIREMENTS", shall be amended to: 6.2 Contractor shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed material reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

IX. Paragraph 6.4., under "OTHER INSURANCE REQUIREMENTS", shall be amended to read:

6.4. Insurance Requirements. Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. CONTRACTOR shall maintain from insurers (with an A.M. Best rating of not less than A-) the following insurance coverages during the term of this Agreement: (i) commercial general liability coverage with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate applying to bodily injury, personal injury, and property damage; (ii) automobile insurance with combined single limits of \$1,000,000 for owned, hired, and non-owned vehicles; (iii) worker's compensation insurance as required by applicable law. CONTRACTOR's general liability insurance policy shall include NMC as an additional insured. Certificates of insurance shall be provided by CONTRACTOR prior to commencement of the services at any premises owned or operated by NMC. To the extent permitted by applicable laws and regulations, CONTRACTOR shall be permitted to meet the above requirements through a program of self-insurance.

X. Paragraph 7.3., under "MAINTENANCE OF RECORDS", shall be amended to: 7.3. Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that CONTRACTOR may be required to maintain 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.

XI. Paragraph 7.4., under "ACCESS TO AND AUDIT OF RECORDS", shall be amended to:

7.3. Access to Records: NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request

of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- XII. Paragraph 8, “ROYALTIES AND INVENTIONS”, shall be**
Omitted in its entirety as it is not applicable.

EXHIBIT A:
Scope of Services/ Payment Provisions

This Scope of Services is entered into by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC"), and **Stryker Sales Corporation dba Stryker Instruments** hereinafter referred to as ("CONTRACTOR") pursuant to the Service Agreement between NMC and CONTRACTOR attached hereto with a start date commencing upon the execution of this Agreement (the "Agreement") and is subject to the terms and conditions of the Agreement.

I. Description of All Services to be Rendered by CONTRACTOR:

CONTRACTOR shall provide NMC with Preventative Care Services on all Power Tools and Neptune Equipment in accordance with the attached Exhibit, herein as ("*Exhibit A-1: Product Service Plan- Equipment Inventory*"), for a set monthly fee described in section IV herein this Exhibit A.

II. CONTRACTOR Obligations:

- a. CONTRACTOR shall furnish NMC with all parts, labor, transportation and expertise necessary to provide preventive maintenance (PM) listed in the attached Exhibit A-1.
- b. CONTRACTOR shall include semi-annual visits for preventative maintenance measures on Neptune Equipment and all Power Tools listed in Exhibit A-1 to ensure optimal speed.
- c. CONTRACTOR's fixed monthly cost described in section IV herein this Exhibit A, shall include all maintenance and repair services of all equipment listed in Exhibit A-1, and all costs associated with the Power Tools and Neptune Equipment Preventative Care Plan(s) as follows:

I. Prevent Care – Power Tools:

Prevent Care – Power Tools coverage shall include equipment listed in Exhibit A-1, and all accompanying costs for (1) Parts and Labor associated with Mail-in Preventative Maintenance and Inspections; where, "Mail-in" is further defined as equipment listed in Exhibit A-1 sent by mail to CONTRACTOR for repair and sent to CONTRACTOR's Headquarters (2) Parts and Labor associated with repair / replacement costs associated with accessories listed in Exhibit A-1 Section B, and (3) Freight costs associated with shipments of repairs and loaners, described under Paragraph II Section G herein this Exhibit A, to NMC campus.

II. **Prevent Care- Neptune:**

Plan coverage shall include the equipment listed in Exhibit A-1 Section A, and all accompanying costs for Parts, Labor & Travel associated with scheduled On-site Preventative Maintenance Service and Inspections for items listed in Exhibit A-1 Section A.

d. **INSPECTION:**

- I. **Initial Inspection:** CONTRACTOR's Equipment listed in Exhibit A-1 are to be serviced as part of this Agreement and has been verified and determined by the CONTRACTOR's Representative to be in good operating condition upon his/her initial inspection thereof.
- II. **Inspection Scheduling:** CONTRACTOR shall schedule a mutually agreeable time and date with NMC for service inspections. Equipment not made available at the specified time of scheduled service date shall be serviced at the next scheduled service inspection unless specific arrangements are made in advance.
- III. **Inspection Activity:** CONTRACTOR's Service Representative shall inspect each available item of Equipment as required in accordance with CONTRACTOR's current Maintenance procedures for said Equipment listed in Exhibit A-1 on each scheduled service inspection.

e. **EQUIPMENT SCHEDULE CHANGES:**

- I. CONTRACTOR shall adjust the charges to the monthly fee described in section IV herein this Exhibit A, for any additional Equipment not listed in Exhibit A-1, upon written consent between CONTRACTOR and NMC.

f. **PREVENTATIVE MAINTENANCE SERVICES:**

- I. CONTRACTOR shall perform all preventative maintenance (PM) services as specified herein and as necessary to maintain the optimum level of efficiency for each specified piece of equipment as listed in Exhibit A-1, in accordance to manufacturer specs and/or recommendations.
- II. CONTRACTOR shall ensure that equipment listed in Exhibit A-1 shall perform reliably after servicing. If equipment is deemed non-repairable upon completion of the PM Service, CONTRACTOR shall alert NMC staff that the equipment is unsafe for use or not operable.
- III. Services provided under this agreement shall be performed by the CONTRACTOR during normal business hours 7:00 a.m. to 5:00 p.m., Monday through Friday, county holidays and weekends excluded, or as mutually agreed upon between the CONTRACTOR and the Monterey County.

g. LOANER EQUIPMENT:

- I. CONTRACTOR shall provide NMC a complimentary replacement equipment during the period in which CONTRACTOR is servicing, repairing and/ or replacing NMC's Equipment ("Loaner Period"). The replacement equipment will be like kind to maintain consistency with NMC's non-functioning equipment. Once CONTRACTOR receives NMC's non-functioning equipment, title to the replacement equipment will transfer to NMC on an "AS IS, WHERE IS" basis, without recourse to or warranty of CONTRACTOR. Likewise, when CONTRACTOR receives NMC's non-functioning equipment, title to the non-functioning equipment shall transfer to CONTRACTOR on an "AS IS, WHERE IS" basis, without recourse to or warranty of NMC.
- II. The Loaner Unit remains the exclusive property of CONTRACTOR and must be returned to CONTRACTOR within thirty (30) days.
- III. CONTRACTOR reserves the right to refuse to provide NMC with Substitute Equipment if CONTRACTOR reasonably believes, in its sole and absolutely discretion, that NMC is abusing the intent of the Substitute Equipment program.

III. NMC Obligations:

- a. NMC will have equipment requiring service, available at the time of scheduled appointment.
- b. NMC will adhere to the routine maintenance instructions as provided by CONTRACTOR.
- c. NMC's appropriate user personnel should be entirely familiar with the instructions and contents of those manuals, labels and inserts and implement them accordingly.
- d. NMC will be responsible for repair or replacement costs caused by any destruction, damage to, misuse or abuse of the Loaner Units, other than normal wear and tear, as reasonably determined by CONTRACTOR
- e. At the end of the Loaner Period, NMC will have thirty (30) days from the date CONTRACTOR ships the replacement equipment to NMC. In the event NMC fails to send the non-functioning equipment to CONTRACTOR within the above stated time frame, CONTRACTOR reserves the right to invoice NMC, and NMC agrees to pay the full replacement cost of the replacement equipment. Upon payment, CONTRACTOR will transfer title to the replacement equipment to NMC on an "AS IS, WHERE IS" basis, without recourse to or warranty of CONTRACTOR.
- f. NMC shall promptly return the Loaner Unit to CONTRACTOR within thirty (30) days from the date the Loaner Unit was shipped to NMC.

- g. NMC shall be responsible for repair or replacement costs caused by any destruction, damage to, misuse or abuse of the Loaner Units, other than normal wear and tear, as reasonably determined by CONTRACTOR.

IV. Pricing/Fees:

- a. Invoices will be submitted to NMC for a fixed monthly cost not to exceed \$2,907.86.
- b. Monthly fees are invoiced automatically and covers all repairs and labors required throughout the lifetime of this Agreement.
- c. Additional Fees:
 - i. In the event CONTRACTOR does not receive the non-functioning equipment within thirty (30) days from the date the Loaner Unit was shipped to NMC, CONTRACTOR will invoice NMC, and NMC agrees to pay, a usage fee of no more than \$1,000. In the event the Loaner Unit is not returned to CONTRACTOR within thirty (30) days from the date the Loaner Unit was provided to NMC, CONTRACTOR will invoice NMC and NMC agrees to pay an extended usage fee of no more than \$1,000. In the event the Loaner Unit is not returned to CONTRACTOR within sixty (60) days from the date the Loaner Unit was provided to NMC, CONTRACTOR will invoice NMC and NMC agrees to pay a second extended usage fee of no more than \$1,000. If the Loaner Unit is not returned to CONTRACTOR within ninety (90) days from the date the Loaner Unit was provided to NMC, CONTRACTOR will invoice NMC and NMC agrees to pay for the full replacement value of the Loaner Unit less the invoiced and paid extended usage fees and CONTRACTOR will transfer title of the Loaner Unit to NMC on an "AS IS, WHERE IS" basis, without recourse to or warranty of CONTRACTOR.

V. Miscellaneous Terms:

- a. CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in monthly fee of those charged any other client for the same services performed by the same individuals.
- b. Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.
- c. County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.
- d. No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

Exhibit A-1
Product Service Plan- Equipment Inventory

6201 Sprinkle Road
Portage, MI 49002
t: 1-800-253-3210
www.stryker.com

stryker

Instruments

PROCARE COVERAGE

Existing Equipment

Product	Description	Yrs.	Qty	Sell Price	Total
0702001000W	Neptune 2 Rover ProCare	2.00	2	\$2,096.50	\$8,386.00
0703001000W	N3 Rover ProCare	1.08	1	\$2,096.50	\$2,264.22
0702014000W	Neptune 2 Docker ProCare	2.00	1	\$2,096.50	\$4,193.00
4000000000W	Cordless/Rotary Attch ProCare	2.00	6	\$266.70	\$3,200.40
4405000000W	Cordless Driver 4 ProCare	2.00	3	\$922.60	\$5,535.60
4408000000W	Sabo 2 Saw ProCare	2.00	3	\$922.60	\$5,535.60
6400000000W	Rem B Attachment ProCare	2.00	4	\$234.50	\$1,876.00
6400015000W	RemB Micro Drill ProCare	2.00	2	\$501.20	\$2,004.80
6400031000W	RemB Oscillating Saw ProCare	2.00	2	\$501.20	\$2,004.80
6400034000W	RemB Sagittal Saw ProCare	2.00	2	\$501.20	\$2,004.80
6400037000W	RemB Recip Saw ProCare	2.00	2	\$501.20	\$2,004.80
6400062000W	RemB Dedicated Driver ProCare	2.00	2	\$702.80	\$2,811.20
6400099000W	RemB U-Driver ProCare	2.00	2	\$702.80	\$2,811.20
7000000000W	System 7 Attachment ProCare	2.00	8	\$305.20	\$4,883.20
7110120000W	Universal Charger ProCare	2.00	2	\$338.10	\$1,352.40
7205000000W	System 7 Dual Trigger ProCare	2.00	4	\$922.60	\$7,380.80
7206000000W	System 7 Recip Saw ProCare	2.00	4	\$922.60	\$7,380.80
7208000000W	System 7 Sagittal Saw ProCare	2.00	4	\$922.60	\$7,380.80
7212000000W	System 7 Small Battery ProCare	2.00	6	\$305.20	\$3,662.40
7215000000W	System 7 Large Battery ProCare	2.00	8	\$305.20	\$4,883.20
9000100000W	Stryker ProCare On-Site Visit	2.00	2	\$1,816.50	\$7,266.00
Customer Loyalty Discount					-\$19,033.30

Monthly Payment \$2,907.86

Grand Total \$69,788.72

Repair Items Exhibit A - Section A

Product #	Description	Serial #
0702001000W	Neptune 2 Rover ProCare	1600704233
0702001000W	Neptune 2 Rover ProCare	1601803353
0703001000W	N3 Rover ProCare	1708117113
0702014000W	Neptune 2 Docker ProCare	1600407473
4405000000W	Cordless Driver 4 ProCare	1620310573
4405000000W	Cordless Driver 4 ProCare	1620405673
4405000000W	Cordless Driver 4 ProCare	1620420583
4408000000W	Sabo 2 Saw ProCare	1621900523
4408000000W	Sabo 2 Saw ProCare	1621900673
4408000000W	Sabo 2 Saw ProCare	1621900703
6400015000W	RemB Micro Drill ProCare	1621813253
6400015000W	RemB Micro Drill ProCare	1622207713
6400031000W	RemB Oscillating Saw ProCare	1625001783
6400031000W	RemB Oscillating Saw ProCare	1625001793
6400034000W	RemB Sagittal Saw ProCare	1625106423
6400034000W	RemB Sagittal Saw ProCare	1625106433
6400037000W	RemB Recip Saw ProCare	1625404473
6400037000W	RemB Recip Saw ProCare	1625404483
6400062000W	RemB Dedicated Driver ProCare	1606503003
6400062000W	RemB Dedicated Driver ProCare	1606503013
6400099000W	RemB U-Driver ProCare	1622809093
6400099000W	RemB U-Driver ProCare	1625100933
7110120000W	Universal Charger ProCare	1622800343
7110120000W	Universal Charger ProCare	1622800353
7205000000W	System 7 Dual Trigger ProCare	1622212933
7205000000W	System 7 Dual Trigger ProCare	1622213053
7205000000W	System 7 Dual Trigger ProCare	1622213273
7205000000W	System 7 Dual Trigger ProCare	1622213283
7206000000W	System 7 Recip Saw ProCare	1621614343
7206000000W	System 7 Recip Saw ProCare	1621614603
7206000000W	System 7 Recip Saw ProCare	1621614633
7206000000W	System 7 Recip Saw ProCare	1623217553
7208000000W	System 7 Sagittal Saw ProCare	1622903183
7208000000W	System 7 Sagittal Saw ProCare	1623606663
7208000000W	System 7 Sagittal Saw ProCare	1623606783
7208000000W	System 7 Sagittal Saw ProCare	1623606793
9000100000W	Stryker ProCare On-Site Visit	N/A
0703001000W	Customer Loyalty Discount	N/A

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Instruments

Replacement Items Exhibit A - Section B

Product #	Description
4000000000W	Cordless/Rotary Atch ProCare
6400000000W	Rem B Attachment ProCare
7000000000W	System 7 Attachment ProCare
7212000000W	System 7 Small Battery ProCare
7215000000W	System 7 Large Battery ProCare

Exhibit B:
Additional Risk Provisions

The additional risk provisions will be attached to the County of Monterey Agreement for Services (hereinafter "Agreement") by and between **Stryker Sales Corporation dba Stryker Instruments**, (hereinafter "CONTRACTOR") and the County of Monterey, on behalf of Natividad Medical Center (hereinafter "NMC").

NOW, THEREFORE, NMC and CONTRACTOR agree that the Agreement terms and conditions shall be added to the current Agreement as follows:

I. SERVICE PLAN WARRANTY AND LIMITATIONS

During the term of the Service Plan, CONTRACTOR shall maintain the Equipment in good working condition. Equipment and Equipment components repaired or replaced under this Service Plan continue to be warranted during the full term of the agreement. When Equipment or component is replaced, the item provided in replacement will be the NMC's property and the replaced item shall be CONTRACTOR's property. If a refund is provided by CONTRACTOR, the Equipment for which the refund is provided must be returned to CONTRACTOR and shall become CONTRACTOR's property. There are no express or implied warranties by CONTRACTOR other than the warranties hereinabove described with respect to the Service Plan or the Equipment covered thereunder, including without limitation, warranty of merchantability or fitness for a particular purpose Notwithstanding any other provision of this Agreement, the Service Plan does not include repairs or other services made necessary by or related to, the following: (1) Abnormal wear or damage caused by misuse or by failure to perform normal and routine maintenance as set out in the CONTRACTOR Maintenance Manual or Operating Instructions. (2) Accidents (3) Catastrophe (4) Acts of God (5) Any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-CONTRACTOR Instruments authorized personnel (6) Equipment on which any original serial numbers or other identification marks have been removed or destroyed; or (7) Equipment that has been repaired with any unauthorized or non-CONTRACTOR components. In addition, to ensure safe operation of CONTRACTOR Equipment, only CONTRACTOR accessories should be used. CONTRACTOR reserves the right to invalidate the Service Plan and complimentary loaner programs if Equipment is used with accessories not manufactured by CONTRACTOR

II. LIMITATION OF LIABILITY

The maximum aggregate amount for which either party may be liable under this agreement will be limited to the aggregate limits of the insurance as set forth in the agreement, section IV under "INSURANCE".

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III. FORCE MAJEURE

Neither Party shall be liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's reasonable control (a "**Force Majeure Event**"), including, without limitation, acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each Party shall in good faith use its best efforts to perform its duties and obligations under this Agreement. If a Party wishes to claim protection with respect to a Force Majeure Event, it shall as soon as possible following the occurrence or date of such Force Majeure Event, notify the other Party of the nature and expected duration of the force majeure event and shall thereafter keep the other Party informed until such time as it is able to perform its obligations.

IV. WARRANTY OF NON-EXCLUSION

Each party represents and warrants that as of the Effective Date, neither it nor any of its employees, are or have been excluded terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs. Each party further represents that no final adverse action by the federal or state government has occurred or is pending or threatened against the party, its affiliates, or, to its knowledge, against any employee, CONTRACTOR, or agent engaged to provide items or services under this Agreement. Each party also represents that if during the term of this Agreement it, or any of its employees becomes so excluded, terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs, such will promptly notify the other party verbally and in written notice. Each party retains the right to terminate or modify this Agreement in writing signed by NMC and CONTRACTOR in the event of the other party's exclusion from a federal or state health care program.

V. HIPAA

All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived from or obtained during the course of the Agreement, shall be treated by both parties as confidential so as to comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. CONTRACTOR is not a "business associate" of NMC, as the term "business associate" is defined by HIPAA (the Health Insurance Portability and Accountability Act of 1996 and 45 C.F.R. parts 142 and 160-164, as amended). To the extent CONTRACTOR in the future becomes a business associate of NMC, the parties agree to negotiate to amend the Agreement as necessary to comply with HIPAA, and if an agreement cannot be reached the Agreement will immediately terminate.