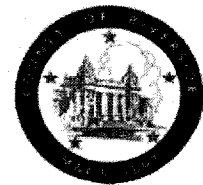


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

426



FROM: Riverside County Regional Medical Center (RCRMC)

SUBMITTAL DATE:
December 22, 2009

SUBJECT: Amendment with Cerner Corporation for Telephone Consulting Licensed Software Support.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve and authorize the Chairman to sign the Amendment between Cerner Corporation and RCRMC, effective January 1, 2010 through June 30, 2010 in an aggregate amount of \$110,893;
- 2) Authorize the Purchasing Agent to sign ministerial amendments and renewal options, on a month to month basis up to an additional (6) six month period, not to exceed \$18,482 per month.

BACKGROUND: On April 1, 1997, Agenda Item 3.38, the Board approved Cerner Corporation as the awarded contractor to provide RCRMC with the automated Laboratory, Radiology and Pharmacy In-patient applications. The Cerner Licensed Software support has continued on a year to year basis since that time. And on January 6, 2009, Agenda Item 3.23, the Board approved to extend the Agreement for an additional six month to complete the acquisition, installation, implementation and support for the Hospital Information System (HIS) project.

Ellie Bennett For Doug Bagley
Ellie Bennett, Chief Operating Officer for
Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 110,893	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	09/10

SOURCE OF FUNDS: 100% Hospital Enterprise Fund	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

Prev. Agn. Ref.: 4/1/97; #3.38; 1/6/09; **District:** **Agenda Number:**
#3.23

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.52

FORM APPROVED COUNTY COUNSEL

BY: NEAL R. KIPNIS DATE

Departmental Concurrence

Purchasing: Mark Seiler, Assistant Director

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

SUBJECT:

Page 2

BACKGROUND (Continued):

This amendment will extend the Agreement to ensure implementation service and support is complete and provide for a smooth transition.

Cerner Corporation is the owner and developer of the automated system and no other contractor is able to provide licensing or support.

JUSTIFICATION FOR DELAY:

RCRMC and Cerner Corporation have negotiated extensively on the final support needed and a transition plan to the hospital's ancillary project. Cerner has continued services while negotiations were taking place to ensure no interruption to the daily operation.

PRICE REASONABLENESS:

Cerner has offered the telephone consulting services for a reduced cost during this period.

FINANCIAL IMPACT:

The Contract will be funded 100% under the Hospital Enterprise Funds.

DB:ns

**TELEPHONE CONSULTING
LICENSED SOFTWARE SUPPORT AGREEMENT ("Agreement")**

Client:	Riverside County Regional Medical Center
Starting Date of this Agreement:	1/1/2010
End date of this Agreement:	06/30/2010
Service Fee for this Agreement:	\$ 110,892.72
Licensed Software Supported:	PathNet (General Laboratory, Microbiology Blood Bank, Anatomic Pathology), PharmNet-Inpatient Pharmacy, RadNet
Site(s):	Riverside County Regional Medical Center

1. **General.** This Agreement sets forth the terms and conditions under which Cerner Corporation ("Cerner") agrees to provide to the Client named above ("Client") telephone consulting and support services (the "Services") set forth in this Telephone Consulting Licensed Software Support Agreement (the "Agreement") for the Licensed Software set forth above at the site(s) set forth above.

2. **Term and Termination.** Upon payment by Client of the Service Fee, this Agreement shall be effective and shall continue in full force and effect through June 30, 2010, at which time this Agreement, and all services shall terminate. Client shall have the right to continue the Services on a month-to-month basis after June 30, 2010, for up to six (6) months, at a rate of \$18,482.12 per month plus any applicable annual increase consistent with Paragraph 6.1 of the Cerner System Agreement. Client must provide Cerner with written documentation of such extension not less than sixty (60) days prior to the end of the term. Upon termination of this Agreement, Client agrees to (a) surrender its licenses to use the Licensed Software, (b) return the Licensed Software to Cerner, (c) destroy all backup copies of the Licensed Software, and (d) comply fully with all termination obligations, with respect to the Licensed Software, imposed upon Client under the applicable license agreement between Client and Cerner.

3. **Service Fee.** Client agrees to pay the Service Fee set forth above to Cerner on January 1, 2010

4. **Services.**

a. **Telephone Consulting Service:** Cerner agrees to provide Client with the following telephone consulting services:

- i. Answering procedural questions related to the Licensed Software.
- ii. Consulting on the use of the Licensed Software.
- iii. Diagnosing Licensed Software problems.

b. **Service Availability.** Cerner personnel will be available for service calls during the hours of 7:00 AM and 6:00 PM Central Time, Monday through Friday, except holidays.

5. **Location of Licensed Software.** Client will not transfer the Licensed Software outside its data processing facility or outsource the operation of the Licensed Software to any third

party without Cerner's prior written consent.

6. Assignment. Cerner may assign its obligations to perform all or any portion of the services described in the Agreement to any third party so long as such services meet or exceed those specified herein.

7. Force Majeure. Cerner shall not be liable under this Agreement for failure to perform its obligations under this Agreement due to:

a. Causes beyond Cerner's reasonable control; or

b. Acts of God, acts of Client, acts of civil or military authority, government priorities, strikes, or other labor disputes, floods, epidemics, war, riot, delays in transportation; or

c. Inability or delay in performance on account of any causes beyond the reasonable control of Cerner to obtain necessary materials, components, services or facilities.

In the event of any delay caused by the foregoing, Cerner will notify Client promptly and will specify an estimated date for re-commencement of Services.

8. Damages from Transportation or Alteration. Cerner shall not be responsible under this Agreement for any damages resulting from or caused by any transportation of any item, nor shall Cerner be responsible if any item has been altered other than with Cerner's authorization and by its approved procedures. Cerner shall not be liable for any damages resulting from or caused by Client's improper installation or use of hardware or software, including the Licensed Software.

9. Exclusions From Services: The Licensed Software is designed to operate on the computer system in which it has been installed as originally installed and configured. Services hereunder do not include services required by Client where Client's systems have been altered or modified or where an adjustment, repair or parts replacement is required because of an accident, unusual physical condition, electrical or electromagnetic stress, misuse, failure of electric power, air conditioning or humidity control. This Agreement does not cover or include any third party hardware or third party software or any support or maintenance services for such hardware or software (e.g. operating system, data base, utility or any other third party software) used in connection with or to operate the Licensed Software. Services provided outside the scope of services set forth herein must be paid for by Client at Cerner's then-current hourly services rates, along with travel and out of pocket expenses. Any services performed by Cerner to replace parts or repair damage due to actions or omissions of a third party or of Client, or equipment or software not recommended by Cerner, are also subject to additional charges in accordance with the preceding sentence. Further, this Agreement does not include any services relating to adding, removing or maintaining accessories, attachments, machines or other devices not furnished or recommended by Cerner. Cerner and Client agree there are no upgrades or enhancements included in this Agreement.

10. Warranty Disclaimer and Limitation of Liability: ANY WARRANTIES CERNER PROVIDED TO CLIENT IN THE APPLICABLE SOFTWARE LICENSE AGREEMENT WITH RESPECT TO THE LICENSED SOFTWARE ARE NO LONGER APPLICABLE TO OR ENFORCEABLE BY THE CLIENT. CLIENT

OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING ANY SERVICES SOLD HEREUNDER AND FURTHER DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE. FURTHERMORE, CERNER MAKES NO REPRESENTATIONS AND SPECIFICALLY DISCLAIMS ALL WARRANTIES ON ANY THIRD-PARTY HARDWARE AND SOFTWARE PRODUCTS OR SERVICES. CERNER MAKES NO REPRESENTATIONS, WARRANTIES OR ASSURANCES OF PERFORMANCE OF THIRD PARTY HARDWARE, SOFTWARE OR SERVICES, REGARDLESS OF MAKE, MODEL OR VERSION.

IN NO CASE SHALL CERNER BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, AND IRRESPECTIVE OF THE THEORY OR CAUSE OF ACTION UPON WHICH THE DAMAGES MIGHT BE BASED. CERNER'S MAXIMUM LIABILITY TO CLIENT FOR ANY CLAIM OR SERIES OF RELATED CLAIMS ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY CLIENT TO CERNER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE ACTION.

11. Waiver. No waiver by either party of any violation or default of any of the terms of this Agreement shall be deemed or construed to constitute a waiver of any other or subsequent violation or breach of any of the terms of this Agreement.

12. No Assignment. Neither this Agreement nor any Services to be provided hereunder are assignable by Client; and any attempt by Client to assign all or any part of its rights, benefits, duties or obligations hereunder without the express prior written consent of Cerner shall be void and of no force or effect.

13. Modification. This Agreement constitutes the entire agreement between the parties and supersedes all previous communications, representations or agreements, either oral, or written, with respect to the subject matter hereof. No representations or statements of any kind made by any representative of either party which are not stated herein shall be binding upon it. No addition or modification of any provision of this Agreement shall be binding upon either party unless made in writing and signed by both parties.

14. Applicable Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of California.

15. Severability. Invalidity, in whole or in part, of any of the provisions of this Agreement will not affect the validity of the remainder of such provision or any other provisions in this Agreement.

IN WITNESS WHEREOF, Cerner and Client have signed this Agreement as of the date indicated beneath their respective signatures.

ACCEPTED BY Client:
**RIVERSIDE COUNTY REGIONAL
MEDICAL CENTER
CERNER CORPORATION**

By: _____

Title: _____

Date: _____

ACCEPTED BY Cerner:

By: *Mark C. [Signature]*

Title: CEO

Date: 11/20/09

Cerner Corporation 2800 Rockcreek Parkway Kansas City, MO 64117-2551 (816)-221-1024

FORM APPROVED COUNTY COUNSEL
BY: *[Signature]* DATE _____
NEAL R. KIPNIS