

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

414



FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
April 24, 2014

SUBJECT: Professional Service Agreement with Morrison Management Specialist, Inc. [All District; \$18,682,956; Enterprise Fund]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and authorize the Chairman of the Board to execute the Professional Services Agreement with Morrison Management Specialist, Inc. for a term of three years with the option to renew for two additional one-year periods, for an aggregate base fee amount of \$732,589 for the first year and \$782,592 for years two through five, plus an estimated project purchase of \$2,964,000 annually;
2. Authorize the existing Morrison Agreement and corresponding payments to be extended from April 1, 2014 through May 5, 2014, the day before the start of the new Morrison agreement;
3. Approve to reimburse Morrison Management Specialist, Inc., for the pass through items purchased for an additional amount not to exceed \$180,525 through May 5, 2014; and;
4. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise annual renewal options, based on the availability of fiscal funding, to sign amendments that do not change the substantive terms of the agreement, and to allow the Purchasing Agent to increase the compensation amount not more than ten percent should the need for products exceed the estimated volume and the increase does not exceed the CPI rate.

Lowell Johnson
Lowell Johnson, Interim CEO

FORM APPROVED BY COUNTY COUNSEL
BY: *NEAL R. KIPNIS* DATE: _____
Departmental Concurrence

Purchasing: *Mark Seiler*
Mark Seiler, Assistant Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 180,525	\$ 3,696,582	\$ 18,682,956	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: Hospital Enterprise Fund 100%				Budget Adjustment: No	
				For Fiscal Year: 13/14-18/19	

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

BY: *Debra Cournoyer*
Debra Cournoyer

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: 6/4/13; 3-43, 12/17/13; 3-50 | District: ALL | Agenda Number:

3-19

BACKGROUND:

Summary (continued)

Hospitals are known to treat the "sick," but as we move into the next era of care, hospitals are transitioning to become places of health maintenance. The Food and Nutrition Department at Riverside County Regional Medical Center (RCRMC) is prepared to better arm itself to meet the demands and regulations of state requirements to ensure services maintain competency level. This service would establish a strategic long-term vendor partnership, ensure compliance with state and federal regulations, increase patient and employee satisfaction, maximize efficiency of production system, obtain accurate and clear cost accounting and billing, and establish department benchmarks and initiate periodic reviews by providing leadership within the Food and Nutrition Services (FNS) department.

On June 4, 2013, Agenda Item 3-43, the Board approved the Professional Services Agreement with Morrison to provide outside specialized consulting services to assist in reconfiguring the hospitals FNS department to adequately meet Centers for Medicare and Medicaid Services (CMS) requirements. As a requirement of the Centers for Medicare and Medicaid Services (CMS), CMS previously conducted Medicaid certification surveys at RCRMC, more specifically focused on the FNS department which recently, has not successfully met CMS compliance. On December 17, 2013, the Board approved to extend Morrison services through April 30, 2014 to allow additional support personnel to assist the interim director of the hospitals FNS department. Under the advice of CMS, RCRMC was to establish a partnership with a consultant company to assist FNS department meet competency levels and improve processes. To ensure the hospital has sufficient funds to cover the services provided by Morrison, an additional \$185,525 is needed to support the efforts for the pass through items that have been purchased under the current Morrison agreement. The benefit of improving RCRMC's current process allows RCRMC to create a consistent practice model for the food and nutrition department and its staff. While the hospital has tried diligently to process hiring full time management positions for the FNS department, the hospital continues to face challenges in its recruitment efforts to find qualified candidates. RCRMC will off-set the cost of partnering with Morrison for management services by not filling similar currently vacant FNS department management positions.

Dining services can positively impact the mission of many hospitals to educate and promote nutritional balance and healthy lifestyles. This education does not happen by accident but is a result of a committed and resourced organization like Morrison Healthcare in partnership with RCRMC. Morrison is highly educated and knowledgeable with state rules and regulations and organized for immediate start up. They are a member of the Compass Group, the nation's only food service company exclusively dedicated to providing food, nutrition, dining and consulting services to hospitals and health systems.

Impact on Citizens and Businesses

This service impacts the patients residing in Riverside County receiving care from RCRMC and the patients' visitors such as family and friends.

Contract History and Price Reasonableness

On behalf of RCRMC, County Purchasing released a Request for Proposal (RFP #MCARC-235), to secure comprehensive food and nutrition management services. Solicitations were sent to ten prospective vendors specializing in these services and advertised on the County's Internet/Website. Of the ten vendors, eight opted out as they were not interested at this time due to various reasons; but more specifically, they were not servicing the west coast or California area.

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Professional Service Agreement with Morrison Healthcare Food Services [All District; \$18,682,956]

DATE: April 24, 2014

PAGE: Page 3 of 3

Two proposals were received and evaluated by three RCRMC administrative staff familiar with the service component and one Huron consultant to provide expertise and guidance in food and nutrition services. The evaluation team reviewed and scored each proposal based on the evaluation criteria as specified in the RFP, which includes the bidder's overall responsiveness to the RFP requirements, their experience with other comparable size hospital facilities, their references as it pertains to the scope of work of the RFP, their technical capability and the overall cost to the County. The two bids were scored however, a Best and Final Offer (BAFO) was conducted offering the opportunity for each bidder to submit their best and final proposed cost. The final scores were 76.20 and 86.40 with Morrison Healthcare Food Services receiving the highest score of 86.40.

Proposed costs were analyzed by the County and Huron consultant. It was determined the total net annual cost ranged from a base fee for management services of \$732,589 annually to \$848,123 annually. The annual cost does not include other projected charges (e.g. food supplies, or other items such as small ware). Morrison proposed the lowest cost of \$732,589 annually. Their proposal also offered \$380,000 in capital investment with zero payback which would account for a net savings of \$76,000 annually to RCRMC. Additionally, Morrison stipulated approximately \$80,000 annual volume savings on food service purchases of supplies through their FoodBuy purchasing program in which Morrison will pay annual fees to Novation one of RCRMC's current Group Purchasing Organization (GPO) on behalf of RCRMC. Lastly, Morrison proposed to implement Blue Sky (a flexible patient service model which will absorb \$60,000 in implementation costs associated with the program.

Morrison will charge a management base fee of \$61,049 each month during the first fiscal year and a management base fee of \$65,216 each month beginning the second fiscal year, which includes a pre-bill charge of \$247,000 each month for food, supplies, and small ware in which the actual costs will only be charged with no additional handling fee or mark up billed to the County. Contract maximum amount for the first year will be \$732,589 and \$782,592 beginning in the second year which does not include a CPI rate increase; extending through the fifth and final year. Therefore, the overall cost of the project for five years is \$18,682,956.

Taking into consideration the proposed programs offered by Morrison, the net annual cost to RCRMC will decrease by approximately \$156,000 annually. Therefore, the total annual cost will be \$576,589. Through contract negotiations, the County has the right to cancel/terminate without cause at any time with a 30 day advance notice. The evaluation team highly recommends Morrison's proposal best met the needs for the food and nutrition department and have determined they were the most responsible/responsive bid.

Review / Approval

Concurrence obtained from Huron, County Purchasing, and County Counsel.

Morrison 416
RCMC

Cournoyer, Debbie

From: mcadwell@huronconsultinggroup.com
Sent: Friday, April 25, 2014 11:34 AM
To: Cournoyer, Debbie
Cc: rnamerow@huronconsultinggroup.com; jolsen@huronconsultinggroup.com; ashanedling@huronconsultinggroup.com
Subject: FW: Scan from Executive Office
Attachments: 20140424120744647.pdf

Debbie -

Huron verifies the accuracy of this submission.

Signed,

Michael G. Cadwell

Managing Director
HuronHealthcare
550 West Van Buren Street | Chicago, Illinois 60607
M: (505) 400-3406 H: (801) 938-9227 F: (866) 310-7736 mcadwell@huronconsultinggroup.com
www.huronconsultinggroup.com

PROFESSIONAL SERVICE AGREEMENT

COMPREHENSIVE FOOD AND NUTRITION MANAGEMENT SERVICES between County of Riverside and Morrison Management Specialist, Inc.

THIS AGREEMENT (the "Agreement") is made effective as of May 6, 2014, (the "Effective Date") between COUNTY OF RIVERSIDE, a political subdivision of the State of California, on behalf of its RIVERSIDE COUNTY REGIONAL MEDICAL CENTER (hereinafter referred to as the "County" or the "Hospital") with offices located at 26520 Cactus Avenue, Moreno Valley, California 92555 and MORRISON MANAGEMENT SPECIALISTS, INC. ("Morrison"), a Georgia corporation with offices located at 5801 Peachtree Dunwoody Road, Atlanta, Georgia 30342.

A. The Hospital desires to have Morrison provide services for the Hospital's food and nutrition services departments at Riverside County Regional Medical Center located at 26520 Cactus Avenue, Moreno Valley, California 92555 and at the County's RCRMC Psychiatric Care Facility located at 9990 County Farm Road, Riverside, California 92503 pursuant to the terms and conditions set forth herein. Each location may be individually referred to as a "Facility" or collectively referred to as the "Facilities".

B. In consideration of the premises and the mutual agreements and covenants hereinafter set forth, the parties mutually agree as follows:

ARTICLE 1 - SERVICES

1.1. **Engagement.** (a) Morrison's Services to the Hospital will include, but not be limited to, the following: the provision of patient meals; the management of the Hospital cafeteria and other food service retail areas; the provision of catering services; the purchase of food and supplies; inventory management; management of Food and Nutrition Services Department personnel, including, but not limited to, scheduling and training employees; and tracking and reporting Department performance.

(b) The Hospital agrees to retain Morrison to provide the Services for the food services program (the "Program" or, collectively, the "Programs") and Food and Nutrition Services Department (the "Department" or collectively, the "Departments") at each Facility, and Morrison agrees to provide the Services on the Hospital's behalf. The Morrison proposal dated February 6, 2014 is incorporated by reference into and made part of this Agreement. To the extent there is any conflict between the proposal and this Agreement, then the terms of the Agreement shall control.

1.2 **Personnel.** (a) Morrison will furnish the following management personnel (the "Management Personnel") to provide the Services on-site at the Facilities:

Food Service Director
Executive Chef
Clinical Nutrition Manager
Patient Services Manager

Morrison will pay the Management Personnel and be responsible for all associated payroll costs related to the Management Personnel, including all payroll taxes, insurance and fringe benefits. The cost of the Management Personnel, including Morrison's Management Percentage Rate charge, is included in Morrison's Monthly Charge, which is the basis of payment to Morrison for its

PROFESSIONAL SERVICE AGREEMENT

services in addition to any other charges from Morrison to the Hospital that are permitted under the terms of this Agreement. The Hospital may request removal of any Morrison Management Personnel and Morrison will comply, provided such request is lawful, reasonably justified in writing, and Morrison is first given an opportunity to respond and address such issues consistent with this Agreement. On a quarterly basis or upon County's request, Morrison shall provide current payroll register to County.

(b) On or after the Effective Date, the parties may mutually agree to adjust management staffing in connection with Morrison's operation of the Departments. In such a case, Morrison's applicable Monthly Charge as specified in Section 2.2 of this Agreement will be adjusted (increased or decreased, as applicable) to account for the additional costs incurred by Morrison or any reduction in the cost incurred by Morrison.

(c) The Monthly Charge will be subject to change in the event of (i) a change to existing or new federal, state or local payroll taxes (including changes to any payroll based taxes or withholdings such as FICA, SUI and FUI); (ii) new or additional fees, taxes, assessments or other charges or costs incurred by Morrison arising out of changes to existing or new federal, state or local legislation or legal requirements related to employee medical insurance or other employee benefits. The Monthly Charge will be increased only upon prior notification and approval from County, to account for the change in such costs effective from the date such changes impose additional costs on Morrison. If the parties are unable to agree upon the change, then either party may terminate this Agreement without cause upon ninety (90) days prior written notice.

(d) All other personnel of the Programs and the Departments who work at the Facilities (the "Hourly Personnel") will be provided by and carried on the Hospital's payroll, and the Hospital will pay all expenses in connection with these personnel, including all wages and associated payroll costs such as payroll taxes, insurance and fringe benefits.

1.3 Purchasing. (a) Morrison's Monthly Charge includes Morrison's provision of the following items: Morrison proprietary software; training and travel for Morrison's Management Personnel; office supplies; cell phones for Morrison's Management Personnel; postage; Morrison's marketing/merchandising/CHAT charges and other "standard" Morrison internal charges; employee physicals, testing and background checks for Morrison employees; patient education materials; business licenses and permits required for Morrison to provide the Services; and sanitation audit fees. Morrison shall not be entitled to charge for travel or other expenses, other than those that are included in the Monthly Charge or otherwise allowed under this Agreement.

Responsibilities for paying vendors directly for the following items are indicated below (M = Morrison; H = Hospital):

Item	Morrison (Included in Monthly Charge)	Morrison (Not Included in Monthly Charge Charged to Hospital)	Hospital
Food		M	
CHAT training materials/charges	M		
In-service training materials and supplies (all other)		M	
Office Supplies/Forms	M		
Copying			H

PROFESSIONAL SERVICE AGREEMENT

Telephone (Local)			H
Telephone (Long Distance)			H
Morrison Manager Cell Phones	M		
Postage/FedEx/DHL	M		
Laundry/Linen		M	
Uniforms		M	
Smallwares Replacements		M	
Tablewares Replacements		M	
Kitchen/Dining Paper and Plastic		M	
Nourishment/Floor Stock Paper		M	
Menu Paper/Printing		M	
Chemicals/Supplies		M	
Maintenance and Repairs			H
Rented/Leased Equipment			H
Service Contracts			H
Marketing/Merchandising/CHAT	M		
Patient Education Materials	M		
Travel & Education – Morrison personnel	M		
Travel & Education – Hospital personnel (if any)			H
Dues/Subscriptions			H
Licenses/Permits Related to Service of Alcohol			H
Morrison Business Licenses/Permits	M		
General Liability Insurance	M		
Miscellaneous (first aid kits; haimets and plastic gloves; periodic cutlery sharpening)		M	
Employee Recruitment			H
Morrison Proprietary Software	M		
Computer hardware and software (all other, including diet office software)			H
Safety Shoes/Belts			H
Utilities			H
Pest Control			H
Employee Physicals, Testing and Background Checks (Morrison employees)	M		
Employee Physicals, Testing and Background Checks (Hospital employees)			H
Garbage/Trash Removal			H
Minor Equipment Replacement (less than \$500)		M	
Major Equipment Replacement (\$500 and over)			H
Armored Car Service			H
Parking			H
Internet Access			H
Sanitation Audit Fees	M		
Bank Card Charges			H

PROFESSIONAL SERVICE AGREEMENT

--	--	--	--

(b) Morrison shall retain title for items purchased by Morrison, if any, until Morrison has been fully reimbursed for those items. The Hospital shall retain title to all items purchased and paid for by the Hospital. Notwithstanding anything to the contrary, all computer hardware and software furnished by or through Morrison, as well as any of Morrison's Proprietary Information, shall remain the property of Morrison (even if fully depreciated). The Hospital will provide high speed/broadband internet access to Morrison at no cost to Morrison in offices for Morrison's use in the Department.

(c) In connection with its Services provided hereunder, Morrison shall order food and supplies for the Department. Morrison's Management Personnel will determine the specifications for and order food and other supplies to be used in the Department at the Facility. Morrison is entitled to utilize its national account or other vendor systems. If vendors extend to Morrison any credits or discounts which are exclusively related to the Hospital's operation of the Program, such credits or discounts shall be passed on to the Hospital. If vendors extend to Morrison any company-wide credits, fees or discounts, including, without limitation, any early payment discounts, administrative fees or volume discounts, Morrison will be entitled to retain such credits, fees or discounts.

(d) As consideration for Morrison's use of Morrison's purchasing programs, and subject to paragraph 1.3(e), Morrison will provide a purchasing credit in the amount of \$6,666.67 per month to the Hospital. However, a purchasing credit will not be provided in any month where Morrison is not purchasing all of the food and supplies for the Department.

(e) The amount of the purchasing credit for each Contract Year shall be the greater of \$80,000 or three percent (3%) of Total Broadline Spend as defined herein. A ("Contract Year") for the purpose of this Agreement shall mean and refer to the twelve (12) month period from the Effective Date and each subsequent twelve (12) month period from each anniversary of the Effective Date. At the end of each Contract Year, the parties will calculate the "Total Broadline Spend", which is the total amount of food and supplies that have been purchased from Morrison's Preferred Broadline Distributor during the Contract Year. If three percent (3%) of Total Broadline Spend is greater than \$80,000, then Morrison will provide an additional purchasing credit to the Hospital. The amount of the additional purchasing credit will be equal to the difference between the \$80,000 and three percent (3%) of Total Broadline Spend (i.e., if Total Broadline Spend is \$2.7 million, then three percent (3%) of that amount is \$81,000; accordingly, Morrison under that hypothetical would provide an additional \$1,000 purchasing credit to the Hospital.

(f) In accordance with Section 1128B(b)(3)(A) of the Social Security Act, the Hospital acknowledges and agrees that, depending upon how the Hospital receives payment for items and services furnished, it may have an obligation to report these payments from Morrison as a discount or rebate in accordance with this provision of the Social Security Act, including any regulations adopted pursuant thereto.

1.4 Hospital Facilities. (a) The Hospital will furnish Facilities that are equipped and furnished to the reasonable satisfaction of Morrison and the Hospital. The Hospital will ensure that the Facilities (including the kitchen) are in good, clean, sanitary, working condition, as of the beginning of Morrison's Services. The Hospital will maintain the Facilities and all items furnished by the Hospital (the "Property") in accordance with Applicable Law, and make all repairs or replacements to the Facilities and Property at its expense, except that Morrison shall be responsible for damage to the same caused by the gross negligence of Morrison's employees.

PROFESSIONAL SERVICE AGREEMENT

(b) Cleaning responsibilities will be as follows (M = responsibility of Program managed by Morrison; H = responsibility of Hospital, not Morrison managed):

Kitchen	Morrison/Program	Hospital
Floors	M	
Walls	M	
Equipment	M	
Refrigerators and freezers	M	
Vents		H
Ceiling		H
Duct work		H
Light replacement		H
Storage Areas for Program		
Floors	M	
Walls	M	
Ceiling		H
Shelving	M	
Cafeteria		
Serving line/equipment	M	
Serving line walls	M	
Serving line floors (customer side)		H
Serving line floors (kitchen side)	M	
Ceiling		H
Dining Area		
Furniture	M	
Equipment	M	
Floors/carpet		H
Windows/walls		H
Ceiling		H
Draperies		H
Floor Stations		
Equipment		H
Floors		H
Walls/ceilings		H
Receiving Area for Program		
Pick-up/spot mop	M	
Daily cleaning		H

(c) With regard to all cafeteria and dining related areas, Morrison will be responsible for cleaning the non-public/non-customer portion of the areas assigned to it where the employees of the Program perform work and the Hospital will be responsible for cleaning and maintenance of the other areas and portions, such as where there is public or customer access/use.

1.5 Inventories. (a) The Hospital will provide a fully adequate initial inventory and supply of Tablewares and Smallwares for satisfactory operating requirements, in Morrison's opinion, at the Hospital's expense. Morrison will be responsible for furnishing replacement Tablewares and Smallwares due to loss or breakage and for purchasing additional Tablewares or Smallwares that are needed due to a change in scope of service. Morrison will charge the Hospital for the cost of the Tablewares and Smallwares furnished by Morrison. The Hospital will be responsible for the cost of replacing Tablewares and Smallwares for aesthetic reasons.

PROFESSIONAL SERVICE AGREEMENT

(b) Morrison will charge the Hospital for food and supplies based on the amount of purchases made by Morrison for the month being billed.

1.6 Meetings. In order to improve communication and effectiveness, the parties agree to meet at mutually agreeable times and places to discuss performance and expectations under this Agreement. This includes having an initial transition and expectation meeting(s) prior to the start of Morrison's services and subsequent meetings at least annually, with participation by appropriate senior management of each party who have decision making authority.

ARTICLE 2 - COMPENSATION

2.1 Billing. (a) The Hospital will pay Morrison for the Services done in accordance with the invoices submitted by Morrison, which will also reflect amounts due and adjustments from prior billings. Payments are due within thirty (30) days of the date of receipt of the invoice and shall be paid by electronic transfer of funds to a bank account designated by Morrison in Morrison's name; any sums unpaid thereafter shall bear interest at the lesser of one (1%) percent per month or the highest rate permitted under Applicable Law, accruing from the date when payment is due.

(b) Morrison will issue an initial invoice on the first day of each month (the "Initial Invoice") Morrison's Initial Invoice will include two (2) charges: (1) a charge for Morrison's then current Monthly Charge; and (2) a pre-bill charge of \$247,000 (the "Pre-Bill Charge"), which is a charge equal to the other projected charges (e.g., food, supplies or other items which are not included in the Monthly Charge) that are due under the terms of this Agreement.

(c) After the close of each month, Morrison will issue a reconciliation invoice (the "Reconciliation Invoice") that will identify the actual amount of the other charges due under the terms of this Agreement (e.g., food, supplies and other items not included in the Monthly Charge) net of a credit for the Pre-Bill Charge for the month being reconciled. Morrison will issue its reconciliation invoice within five (5) days of the close of the month being reconciled.

(d) A sample bill is attached hereto as Exhibit A for informational purposes only. In the event of a conflict between the terms of this Agreement and the sample bill, the terms of this Agreement will control.

2.2 Monthly Charge. (a) Morrison shall be allowed to charge \$61,049 per month for the Services (the "Monthly Charge") during the first contract year and shall be allowed to charge \$65,216 per month during the second contract year, plus any other charges due under the terms of this Agreement. The County shall pay Morrison for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, which describes the full compensation to be paid by the County to Morrison except as otherwise specifically stated in the Agreement. Morrison's Monthly Charge includes Morrison's combined management fee and general and administrative charge. The specific items included within the Monthly Charge during the first Contract Year are attached hereto as Exhibit B.

(b) Morrison's Monthly Charge will increase annually corresponding to the increase in the CPI Adjustment (if any) on each anniversary of the Effective Date. Morrison will notify the County in advance of any CPI increase (within 90 days) prior to the anniversary of the Effective Date to include CPI adjustment applicable on the first anniversary of the Effective Date. For avoidance of doubt, the parties understand and agree that Morrison's Monthly Charge of \$65,216 at the start of

PROFESSIONAL SERVICE AGREEMENT

the second contract year does not include a CPI Adjustment; accordingly, the parties will increase the Monthly Charge of \$65,216 on the first anniversary of the Effective Date to include the CPI Adjustment applicable on the first anniversary of the Effective Date. Morrison will not include any charges on Morrison's invoices in addition to Morrison's Monthly Charge unless (1) such a charge is permitted under the terms and conditions of this Agreement or (2) such a charge is mutually agreed upon by the parties in writing.

(c) Morrison's Monthly Charge identifies the specific items related to the Services to be provided by Morrison and fixed regardless of the actual costs incurred by Morrison. The Hospital shall be responsible for all other costs related to the provision of the Services, either directly or by way of reimbursement to Morrison that are not identified as part of Morrison's Monthly Charge. More specifically, the costs the Hospital will be responsible for shall include, but not be limited to, all food and supplies; and the wages and associated payroll costs related to the Department employees on the Hospital's payroll. Nothing contained in this Agreement shall be construed as a representation or guarantee by Morrison that any financial, budgetary, performance or other goals will be met.

2.3 Cash Received. Any cash sales received from the Program will be collected by the Hospital and delivered to the Hospital's business office.

2.4 Investment. Morrison agrees to make available the sum of up to \$380,000 for investment ("Investment") in renovations, capital equipment and improvements (the "Improvements") for the Department, which Improvements shall be made and located as mutually agreed upon. Subject to public works or other applicable legal requirements, Morrison will have the right to select the vendors who will provide such equipment and select the vendors who will design and construct the renovations and improvements pending review and approval of the County. All such Improvements may be removed or replaced with the parties' approval, and the Investment shall be amortized/depreciated monthly by straight line method from the Effective Date of this Agreement to May 5, 2019. The monthly amount of the amortization/depreciation will be based on Morrison's then current accounting period used by Morrison's parent company. Morrison has agreed to absorb the cost of the Investment; however, the Hospital agrees to pay Morrison immediately the full unamortized/undepreciated value of the Investment plus interest at the "Prime" rate, compounded, on the unamortized/undepreciated amount of the Investment calculated from the Effective Date of this Agreement if one or more of the following occur prior to full amortization/depreciation of the Investment: (a) this Agreement is terminated for any reason; or (b) Morrison ceases to use its national account or other vendor systems for the purchase of the majority of the food and other supplies for the Department. Title to the Improvements shall pass to County after full amortization/depreciation of the Investment, or, if this Agreement is terminated prior to full amortization/depreciation, after payment to Morrison of all amounts owed under this paragraph. The "Prime" rate for such calculations will be determined at the Effective Date of this Agreement and will be as published by the Wall Street Journal. The County, not Morrison, will be responsible for costs incurred in connection with the Investment or Improvements due to delays or costs that are incurred due to circumstances beyond Morrison's control, including, but not limited to, force majeure events; delays in the permitting process; or the existence of hidden, latent and/or unknown problems such as the discovery of asbestos or other hazardous materials.

PROFESSIONAL SERVICE AGREEMENT

ARTICLE 3 - TERM AND TERMINATION

3.1 Term. The initial term of this Agreement will extend from the Effective Date for a period of three (3) years, after which the parties shall have the option to renew the Agreement by written amendment for two (2) additional one (1) year terms. This Agreement may be terminated: :

- (a) at any time by mutual written agreement;
- (b) by either party without cause upon thirty (30) days prior written notice to the other party;
- (c) by Morrison upon fourteen (14) days prior written notice if the Hospital fails to pay any amounts due within thirty (30) days from the date of Morrison's billing; and
- (d) by either party for cause for the other party's failure to perform any duty or obligation under this Agreement in accordance with Section 3.3.

3.2 Changes in Ownership/Administration. Notwithstanding Section 3.1, because significant effort and expense has been made by each party in developing this relationship and opportunity, the parties agree that termination of this Agreement will not be initiated by the County within six (6) months of a significant change in the County Hospital's ownership, unless such termination is based upon a material breach of this Agreement by Morrison which is not cured within thirty (30) days of written notice to Morrison.

3.3 Termination for Cause. The County may, upon thirty (30) days written notice terminate this Agreement for Morrison's default, if Morrison refuses or fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not cure such failure within a commercially reasonable period of time not to exceed thirty (30) days. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. Morrison may, upon thirty (30) day written notice terminate this Agreement for the County's default unless the County cures such default to the reasonable satisfaction of Morrison prior to the end of the thirty (30) day cure period (unless the default involves the County's failure to pay Morrison, in which case the County will have five (5) days to cure such default).

3.4 Cessation of Services. After receipt of the notice of termination, Morrison shall:

(a) Stop all work under this Agreement on the date specified in the notice of termination; and

(b) Transfer to the Hospital and deliver in the manner as directed by Hospital any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to Hospital.

3.5 Liability for Payment After Termination. After termination, the Hospital shall make payment only for Morrison's performance up to the date of termination in accordance with the terms of this Agreement.

PROFESSIONAL SERVICE AGREEMENT

3.6 Cessation of Contractor Rights Upon Termination. Morrison's rights under this Agreement shall terminate (except for fees accrued and other amounts due for services rendered prior to the date of termination or rights that specifically survive termination under the terms of this Agreement) upon dishonesty or a willful or material breach of this Agreement by Morrison; or in the event of Morrison's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, Morrison shall not be entitled to any further compensation under this Agreement subsequent to the cessation of Morrison's Services.

ARTICLE 4 - COMPLIANCE WITH LAWS

4.1 Compliance. Morrison and the Hospital agree to comply with all Applicable Laws.

4.2 The Joint Commission. Morrison agrees to comply with all regulations established by The Joint Commission to which the Hospital may be subject, to the extent Morrison is required to comply. With regard to any fees, discounts, commissions, charges, donations or investments that are provided to the Hospital, the Hospital is solely responsible for any cost reporting or other compliance with state or federal agencies under Medicare/Medicaid programs, as well as any other governmental requirements, charges, liabilities or levies, and any cost reporting for amounts to the Hospital or Morrison under Section 1.3(c). If the Hospital fails or does not successfully pass The Joint Commission and/or Centers for Medicare and Medicaid Services (CMS) audit surveys, then the County may terminate this Agreement in accordance with the terms of this Agreement.

4.3 Taxes. Unless otherwise exempt, the Hospital will be responsible and pay for all taxes, fees, and assessments, including without limitation, any sales and use taxes, including any sales taxes applicable to sales from the retail areas operated by Morrison; personal property taxes on equipment or inventories in the Departments; taxes on operation of the Facility, any taxes imposed on Morrison's fees or other charges to the Hospital pursuant to this Agreement, and any of the above that result from new taxes, legislation or enforcement positions.

4.4 Licenses. Morrison will be responsible for procuring any business licenses that are necessary for Morrison to provide the Services. Morrison will not be responsible for purchasing or serving alcohol in connection to the Services.

4.5 Exemptions. The Hospital will be responsible for providing Morrison any applicable exemption or resale certificate(s) related to Morrison's Services for the Hospital.

4.6 Non-discrimination. Neither party will discriminate in any unlawful manner. Any changes necessary to the physical facility to comply with the Americans with Disabilities Act will be the County's responsibility. **The parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that the parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

ARTICLE 5 - EMPLOYMENT RESTRICTION

5.1 Protection for Hospital Employees. During this Agreement and for one year after its termination (the "Period of Restriction"), Morrison will not, either directly or indirectly, on its own

PROFESSIONAL SERVICE AGREEMENT

behalf or for others, divert, solicit or hire away, without the Hospital's prior written approval, any management, clinical or professional employee working in the Hospital's Department and on the Hospital's payroll at any time during the term of this Agreement (the "Protected Hospital Employees"). Provided, however, the term Protected Hospital Employees shall not include: (a) Management Personnel employed by Morrison, (b) employees provided by Morrison for assignment to the Department, and (c) employees hired by Morrison pursuant to Article 1 of this Agreement.

5.2 Protection for Morrison Employees. During the Period of Restriction, the Hospital will not, either directly or indirectly, on its own behalf or for others, divert, solicit or hire away, without Morrison's prior written approval, any then current or former Morrison management, clinical or professional personnel, or allow such personnel to perform services directly or indirectly for the Hospital or on or from its Facility or property (whether employment is by the Hospital, a subsequent third party contractor, or otherwise). If the Hospital violates this Section 5.2, then the Hospital agrees to pay an amount equal to two (2) years' salary of such personnel, as liquidated damages and not as a penalty. Acceptance of such payment does not constitute a waiver of any other remedies or rights Morrison may have either at law or in equity, including temporary restraining orders or injunctive relief.

ARTICLE 6 - INSURANCE AND INDEMNITY

6.1 Insurance. (a) Without limiting or diminishing Morrison's obligation to indemnify or hold the Hospital harmless, Morrison shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the "Hospital" herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

(b) If Morrison has employees as defined by the State of California, then Morrison shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 each employee/each accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

(c) Morrison shall maintain commercial general liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Morrison's operations. Such policy shall name the Hospital as Additional Insured. The policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit/aggregate. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit.

(d) Morrison shall maintain Professional Liability Insurance providing coverage for Morrison's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 each claim and \$2,000,000 annual aggregate. If Morrison's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and should Morrison change coverage, then Morrison shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the

PROFESSIONAL SERVICE AGREEMENT

date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that Morrison has maintained continuous coverage with the same or original insurer.

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) Morrison must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the Hospital, and at the election of the County's Risk Manager, then Morrison's carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the Hospital, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If a bond is required, Morrison will charge the Hospital for the cost of the bond.

Further, with the exception of Hospital's professional liability coverage, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any cancellation of such insurance. Morrison shall not commence operations until the Hospital has been furnished original Certificate(s) of Insurance. An individual authorized by the insurance carrier shall sign the Certificate of Insurance.

3) It is understood and agreed to by the parties hereto that Morrison's insurance, with the exception of Morrison's professional liability and worker compensation, shall be construed as primary insurance, and the Hospital's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

4) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the Hospital reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by Morrison has become inadequate.

5) Morrison shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

6) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the Hospital.

7) Morrison agrees to notify the Hospital of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

(e) The Hospital shall obtain and maintain All Risk insurance, with replacement cost coverage, for the Hospital's Facility and other Property against risks covered by standard forms of fire, theft, and extended coverage and shall maintain general liability insurance in such

PROFESSIONAL SERVICE AGREEMENT

amounts under such policies as appropriate, but not less than One Million Dollars (\$1,000,000.00) per occurrence, with excess coverage in an amount not less than Five Million Dollars (\$5,000,000.00) to cover claims in the aggregate.

6.2 Worker's Compensation. Both parties will furnish and maintain workers' compensation insurance as prescribed by law and employer's liability insurance in the amount of \$100,000 for all of their respective employees, or either party may provide such coverage through a self-insurance program in accordance with Applicable Law. If requested, each party agrees to furnish the other with a certificate of such insurance (unless self-insured). Each party further agrees to waive any rights of subrogation that its workers compensation insurer may have against the other party with respect to such workers' compensation claims.

6.3 Indemnity. (a) Subject to Section 6.2, Morrison will indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "County Indemnitees") from any liability, claim, damage or action whatsoever, based or asserted upon any services of Morrison, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of Morrison, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. Morrison shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the County Indemnitees in any claim or action based upon such alleged acts or omissions of Morrison.

(b) With respect to any action or claim subject to indemnification herein by Morrison, Morrison shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Morrison's indemnification to County Indemnitees as set forth herein.

(c) Morrison's obligation under this paragraph 6.3 shall be satisfied when Morrison has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

(d) The specified insurance limits required in this Agreement shall in no way limit or circumscribe Morrison's obligations to indemnify and hold harmless the County Indemnitees herein from third party claims.

(e) Subject to Section 6.2, the County shall indemnify, defend and hold harmless Morrison and its officers, agents and employees, with respect to any and all liability, losses, claims, suits, damages, taxes, charges and demands of any kind and nature by any party which any of them may incur or suffer as a result of any cause of action relating solely to or arising solely out of any negligent act or omission of the County.

ARTICLE 7 - FORCE MAJEURE

7.1 Force Majeure Events. Neither Morrison nor the Hospital shall have any liability for failing to perform this Agreement when performance is prevented by force majeure. The term "force majeure" shall mean any government requirement or request, war, public disorders, acts of

PROFESSIONAL SERVICE AGREEMENT

enemies, sabotage, strikes, lockouts, picketing, labor or employment difficulties, fires, floods, acts of God, natural disasters, accidents or breakdowns (whether or not preventable), or any other cause beyond the reasonable control of either party and which could not have been reasonably anticipated.

7.2 Services Under Force Majeure. The Hospital and Morrison understand and agree that events such as hurricanes, tornadoes, fires, floods, concerted employee, union or related activity, or similar severe weather, natural disasters, or labor unrest may interfere with the efficient performance and contemplated operations under this Agreement, and will result in direct and indirect costs not reflected in the above rates and charges. The parties agree that under such conditions, Morrison will work together with the Hospital in good faith to provide services and develop appropriate responses and courses of action, as is practical and reasonable under the circumstances. In the event that the Hospital requests that Morrison provide the Services during a force majeure event, any financial or performance guarantees or incentive penalties to Morrison will not apply under these conditions and instead the Hospital will be responsible for, and hold Morrison harmless from, all costs and expenses associated with the services, responses, courses of action, and operations, whether directly or by reimbursement to Morrison, along with the fees and charges referenced above.

ARTICLE 8 - PROPRIETARY INFORMATION

8.1 Existence. During the term of this Agreement, the Hospital acknowledges that it may acquire, be exposed or obtain access to Proprietary Information of Morrison.

8.2 Protection. All Proprietary Information is confidential to Morrison and at all times will be Morrison's sole and exclusive property. In the event the Hospital receives, obtains access or otherwise is exposed to any Proprietary Information, the Hospital will, and shall cause its officers, employees and agents to:

- (a) hold the Proprietary Information in trust and in strictest confidence;
- (b) not produce, use, copy, distribute or otherwise disseminate the Proprietary Information except to the extent necessary to aid Morrison in performing the Services; and
- (c) otherwise protect the Proprietary Information from disclosure.

8.3 Disclosure. Disclosure of Proprietary Information by the Hospital will not be made to anyone except as necessary for performance of Morrison's Services on a specific need to know basis to those who have agreed to hold the Proprietary Information in trust and strictest confidence in accordance with the terms of this Agreement. The Hospital will take reasonable precautions to prevent disclosure of Proprietary Information to anyone without a need to know such information.

8.4 Return. Upon request by Morrison, and in any event upon termination of this Agreement, the Hospital shall return all property belonging to Morrison that is in the Hospital's custody, control or possession, including all materials containing Proprietary Information.

8.5 Ownership/Use of Contract Materials, Invoices, Reports and Products. Morrison agrees that all materials, reports or products in any form, including electronic, provided by Morrison to the Hospital for which Morrison has been compensated by the Hospital pursuant to this Agreement shall be the sole property of the Hospital. Such material, reports or products may be used by the Hospital for any purpose the Hospital deems to be appropriate, including, but not limit to, duplication and/or distribution within the Hospital or to third parties. Morrison agrees not to

PROFESSIONAL SERVICE AGREEMENT

release or circulate in whole or part such materials, reports, or products without prior written authorization of the Hospital. For the avoidance of doubt, the parties understand and agree that nothing in this paragraph 8.5 shall provide the Hospital with any right, title or interest to any Morrison confidential and/or proprietary materials or information during the term of this Agreement or thereafter.

8.6 Confidentiality of Hospital Information. (a) Morrison shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; Hospital information or data which is not subject to public disclosure; Hospital operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

(b) Morrison shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. Morrison shall not use such information for any purpose other than carrying out Morrison's obligations under this Agreement. Morrison shall promptly transmit to the Hospital all third party requests for disclosure of such information. Morrison shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the Hospital, any such information to anyone other than the Hospital. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

(c) Morrison is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto, to the extent applicable to Morrison's services to the Hospital under this Agreement. Morrison shall adhere to all terms and conditions as outlined and specified in Attachment I, attached hereto and incorporated herein.

8.7 Independent Contractor. Morrison is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the County. It is expressly understood and agreed that Morrison (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which County employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits.

ARTICLE 9 - MISCELLANEOUS

9.1 Notices. All notices under this Agreement will be:

- (a) in writing;
- (b) sent prepaid via overnight courier/certified/registered mail or overnight mail by a reputable carrier, hand delivery or confirmed facsimile (with follow up by another approved notice method); and
- (c) sent to the following address or such other address as may be designated in writing:

PROFESSIONAL SERVICE AGREEMENT

TO Hospital: Attention: Contracts Administration
Riverside County Regional Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555

TO Morrison: Attention: Legal Department
Morrison Management Specialists, Inc.
5801 Peachtree Dunwoody Road
Atlanta, GA 30342

The Hospital shall also deliver any notice to Morrison at the Facility. Notices are deemed received upon actual receipt.

9.2 Entire Agreement and Severability. This Agreement constitutes the entire agreement of the parties with respect to the subject matter. Neither party has relied on any representation, promise, agreement, condition or understanding which is not expressly set forth herein. The terms of this Agreement may not be amended or modified except by a further written statement signed by the parties specifically referencing this Agreement. In case any part of this Agreement is held invalid, illegal or unenforceable, it shall not affect any other provision.

9.3 Successors/Assignment. This Agreement will inure to the benefit of, be binding on, and be enforceable by, the Hospital and Morrison and their lawful successors, representatives and assigns. Either party may assign this Agreement to a parent company, affiliate or subsidiary without notice to the other party. No other assignment shall be valid unless the assignor obtains the prior written consent of the other party.

9.4 Enforcement. The prevailing party in any action to enforce this Agreement will be entitled to recover all costs and expenses it incurs, including reasonable attorney's fees, in connection with such enforcement. No failure or delay on the part of either party in exercising any right or remedy under this Agreement shall operate as a waiver. No provision of this Agreement may be waived except specifically and in writing.

9.5 Applicable Law. This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

9.6 Survival. Upon termination, all rights and obligations under this Agreement will end (except for accrued, unpaid compensation, and the provisions of Articles 5, 6, 8 and 9, all of which will survive such termination).

9.7 Waiver of Consequential Damages. Morrison and the Hospital waive claims against each other for consequential damages arising out of or relating to any Services Morrison is providing hereunder. This mutual waiver includes (a) damage incurred by the Hospital for rental expenses, for loss of use, income, profit, financing, business and reputation, and for loss of productivity or of Services of persons or property; and (b) damages incurred by Morrison for expenses associated with personnel providing Services and for loss of profit associated with

PROFESSIONAL SERVICE AGREEMENT

Services performed for the Hospital. This mutual waiver shall not apply to any applicable amounts due or charges or credits required by the terms of this Agreement.

9.8 Information Technology Systems. In connection with the services being provided hereunder, Morrison may need to operate certain information technology systems not owned by the Hospital ("Non-Hospital Systems"), which may need to interface with or connect to the Hospital's networks, internet access, or information technology systems ("Hospital Systems"). Morrison shall be responsible for all Non-Hospital Systems, and the Hospital shall be solely responsible for Hospital Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If Morrison serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then Morrison will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data ("Data Protection Rules"). If Non-Hospital Systems interface with or connect to Hospital Systems, then Hospital agrees to implement forthwith upon request from Morrison, at its own expense, the changes to the Hospital Systems that Morrison reasonably requests and believes are necessary or prudent to ensure Morrison's compliance with the Data Protection Rules. Each party shall indemnify, defend and hold harmless the other party from all claims, liabilities, damages and costs (including reasonable attorneys' fees) to the extent caused by the indemnifying party's failure to comply with its obligations in this Section.

9.9 Right to Off-Set. Morrison will have the right to apply any amounts that it owes the Hospital under the terms of this Agreement to any past due amounts that the Hospital owes to Morrison.

9.10 Disputes. (a) The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute between the parties relating to this Agreement, which is not resolved by the parties, shall be decided by the Riverside County Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the County's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. Morrison shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

(b) Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

9.11 Supporting Documentation. Morrison will provide supporting or back-up documentation related to Morrison's charges to the Hospital under this Agreement. For the avoidance of doubt, the parties understand and agree that certain Morrison charges are based on corporate allocations for which supporting documentation does not exist.

ARTICLE 10 - DEFINITIONS

10.1 "Applicable Law": statutes, regulations, ordinances and other legal requirements, to the extent applicable to Morrison and the Hospital.

PROFESSIONAL SERVICE AGREEMENT

10.2 **"At Invoice Price" or "Invoice Price"**: the charge by Morrison to the Hospital for items or services that will include all applicable supply, labor (with Percentage Rate), general liability or other insurance, equipment and other related operational costs required for the item or service, but will not include any separate, additional fee by Morrison that is not otherwise provided for in this Agreement. The cost of items purchased through Morrison's purchasing programs will be based on the invoice price paid by Morrison and does not include any rebates, early payment discounts or other volume allowances Morrison receives from its vendors.

10.3 **"CPI Adjustment"**: the adjustment to rates and charges based on the 12 Months Percent Change increase over the prior year in the Consumer Price Index – All Urban Consumers, Hospital and Related Services, Not Seasonally Adjusted, Series ID: CUUR0000SEMD as published by the United States Department of Labor, Bureau of Labor Statistics.

10.4 **"Facility"**: the areas, improvements, real and personal property and facilities of the Hospital, and in particular those related to or used in providing the Services.

10.5 **"Management Percentage Rate" and "Hourly Percentage Rate"**: A percentage rate of payroll charge which relates to direct and indirect payroll taxes, workers' compensation insurance, employer's portion of state and federal unemployment compensation tax, social security tax, accident and health insurance, life insurance and retirement plan contributions, fringe benefits, legal costs and related overhead. Incentive pay is also part of Morrison's Management Personnel costs, and will be either included in the Management Percentage Rate or charged separately. Morrison will notify the Hospital from time to time of any changes in the Management and/or Hourly Percentage Rates, which may be adjusted periodically to cover increases in costs.

10.6 **"Proprietary Information"**: all trade secrets and/or confidential or proprietary information related to the business of Morrison or its affiliates, in any physical, electronic, computerized or other form, including but not limited to: technical and nontechnical data related to operations; computer programs; software; licensed equipment/hardware; diet manuals; videotapes; methods; techniques; processes; finances; actual or potential customers and suppliers; existing and future products; recipes; production sheets; policy, procedure and/or personnel manuals; employees of Morrison and its affiliates; and any information which has been disclosed to Morrison by a third party which Morrison is obligated to treat as confidential.

10.7 **"Services"**: management of the food services at the Facility, including, but not limited to, catered events, as provided to the Hospital by Morrison under this Agreement.

10.8 **"Smallwares"**: non-powered kitchen related items used to prepare and serve food, such as pots, pans, scoops, chef knives, cutting boards, bowls, cooking and kitchen utensils and similar loose items, etc.

PROFESSIONAL SERVICE AGREEMENT

10.9 "Tablewares": items used by individuals in consuming food, such as china, dishware, silverware, flatware, table utensils, glassware, etc.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date.

MORRISON MANAGEMENT SPECIALISTS, INC.

By Edward Clark

Name Edward Clark

Title Regional VP

Date 4-22-2014

**COUNTY OF RIVERSIDE
ON BEHALF OF ITS RIVERSIDE COUNTY REGIONAL MEDICAL CENTER**

By _____

Name _____

Title _____

Date _____

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis 4/22/14
NEAL R. KIPNIS DATE

PROFESSIONAL SERVICE AGREEMENT

Exhibit B

First Contract Year Monthly Charge (Annualized)

PROFESSIONAL SERVICE AGREEMENT

Category		Morrison Healthcare	
Management Fee	Annual Total Cost	\$732,589.00	
Salaries of Recommended Management Team			
	Food Services Director, RD	\$93,687.00	
	Executive Chef	\$68,954.00	
	Patient Services Manager, RD	\$71,659.00	
	Clinical Nutrition Manager, RD	\$78,965.00	
	Retail Manager		On Hospital Payroll
	ITF Manager, RD		On Hospital Payroll
	FSD Potential Bonus	\$12,154.00	
Sub Total		\$327,419.00	
Benefits			
Percentage (%) Calculation	Food Services Director, RD	\$36,361.00	
	Executive Chef	\$26,203.00	
	Patient Services Manager, RD	\$27,230.00	
	Clinical Nutrition Manager, RD	\$30,007.00	
	Retail Manager		Hospital
	ITF Manager, RD		Hospital
	Benefits on FSD Bonus if earned	\$4,619.00	
	OTHER POSITION		
Sub Total		\$124,420.00	
Total wages & Benefits		\$451,839.00	
Operational Costs			
	Proprietary Software - Webtrition	\$2,040	
	Mileage		
	Training/Orientation		
	Training/Staff/Consultants		
	Clinical Nutr Mgr Dues & Subscriptions		
	Management Training and Travel Off Site	\$5,489	
	Office expense	\$9,057	
	Rent		
	Maintenance/Janitorial		

PROFESSIONAL SERVICE AGREEMENT

	Utilities		
	Equipment (New)		
	Equipment Maintenance		
	Equipment Depreciation		
	Accounting		
	Telephone	\$2,333.00	
	Postage	\$655.00	
	Photocopying/Printing		
	Supplies		
	Personnel Advertising		
	Marketing/Merchandising/Wellness	\$6,999.00	
	Patient Education Materials	\$2,877.00	
	Licenses & Permits	\$19,647.00	
	General & Product Liability Insurance	\$37,966.00	
	Employment Insurance		
	Audit	\$600.00	
Total Program Operational Costs		\$87,663.00	
Administrative Overhead			
	Administrative Overhead Costs	\$162,058	
	Corporate/Regional Support	\$81,029	
	Legal/Claims/Damages		
	Year One Overhead Credit	(\$50,000)	
Total Administrative Overhead Costs		\$193,087.00	
			Percentage
Salaries Sub Total		\$327,419.00	44.7%
Benefits Sub Total		\$124,420.00	17.0%
Program Operational Total		\$87,663.00	12.0
Administrative Overhead Costs Total		\$193,087.00	26.3
Grand Total		\$732,589.00	100%
	Net Annual Cost to COUNTY	\$732,589.00	

PROFESSIONAL SERVICE AGREEMENT

ATTACHMENT I

HIPAA Business Associate Agreement
Addendum to Contract between the County of Riverside
and
Morrison Management Specialists, Inc.

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the **Comprehensive Food and Nutrition Management Services** (the "Underlying Agreement") between the County of Riverside ("County") and **Morrison Management Specialists, Inc.** ("Contractor") and shall be effective as of the Effective Date of the Underlying Agreement (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor is a business associate, as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

PROFESSIONAL SERVICE AGREEMENT

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing functions, services and activities on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
 - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.
 - (1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:
 - (a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - (b) The unauthorized person who used the PHI or to whom the disclosure was made;
 - (c) Whether the PHI was actually acquired or viewed; and
 - (d) The extent to which the risk to the PHI has been mitigated.
 - (2) Breach excludes:
 - (a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
 - (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care

PROFESSIONAL SERVICE AGREEMENT

arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.

- (c) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.
- C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.
- D. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- F. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- G. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- I. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").

PROFESSIONAL SERVICE AGREEMENT

- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

2. Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
 - (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
 - (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
 - (a) The disclosure is required by law; or,
 - (b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
 - (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,

PROFESSIONAL SERVICE AGREEMENT

- (3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
 - (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. Prohibited Uses and Disclosures.

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:
 - (1) Not to use or disclose PHI for fundraising, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
 - (2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
 - (3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
 - (4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii),

PROFESSIONAL SERVICE AGREEMENT

unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

5. **Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time, to the extent applicable to Contractor.
- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum. For the avoidance of doubt, the parties understand and agree that the Contractor will not be for implementing safeguards on information technology hardware, software, networks or systems that are owned or operated by County; instead, Contractor will be required to follow all applicable County policies and procedures with

PROFESSIONAL SERVICE AGREEMENT

respect to accessing or using such County owned or operated hardware, software, networks or systems.

- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410.
- F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
- G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
- H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
- J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
- K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI in Contractor's possession, custody or control.
- L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
- M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.

PROFESSIONAL SERVICE AGREEMENT

- N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI, including ePHI.** Provide access to PHI in any designated record set maintained by Contractor, including ePHI if maintained electronically, to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.
 - B. **Amendment of PHI.** Make PHI in any designated record set maintained by Contractor available for amendment and incorporate amendments to PHI in such a designated record set as County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
 - C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI to the extent required by 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
 - (1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - (2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - (3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall, subject to paragraph 5.C:
- A. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates,

PROFESSIONAL SERVICE AGREEMENT

receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;

- B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI in Contractor's possession, custody or control;
 - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI in Contractor's possession, custody or control;
 - D. Protect against any reasonably anticipated uses or disclosures of ePHI in Contractor's possession, custody or control that are not permitted or required under the Privacy Rule;
 - E. Ensure compliance with the Security Rule by Contractor's workforce;
 - F. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;
 - G. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
 - H. Comply with any additional security requirements that are applicable to Contractor in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
 - (1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
 - (2) **Content of notification.** The written notification to County relating to breach of unsecured PHI by Contractor or breach of unsecured PHI in Contractor's possession, custody or control shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:

PROFESSIONAL SERVICE AGREEMENT

- (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
 - (b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 - (c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
 - (d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
 - (f) If the breach is caused by Contractor or involves PHI in Contractor's possession, custody or control, Contractor shall provide contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information reasonably requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
- C. Breach log.** To the extent a breach of unsecured PHI by Contractor or of unsecured PHI in Contractor's possession, custody or control involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be

PROFESSIONAL SERVICE AGREEMENT

construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.

- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.
- G. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).
- (1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
 - (2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information by Contractor or in Contractor's possession without unreasonable delay and no later than two (2) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **Hold Harmless/Indemnification.**

- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives to the extent arising out of or in any way relating to Contractor's breach of this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials,

PROFESSIONAL SERVICE AGREEMENT

employees, agents or representatives in any claim or action based upon Contractor's breach of this Addendum.

- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
 - C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from Contractor's breach of this Addendum.
 - D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
 - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.
10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party may constitute a material breach of the Underlying Agreement and may provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

- (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.

PROFESSIONAL SERVICE AGREEMENT

- (2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the reasonable satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- (3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. Effect of Termination.

- (1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in writing by County, destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

12. General Provisions.

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.

PROFESSIONAL SERVICE AGREEMENT

E. Conflicts. The provisions of this Addendum regarding the use or disclosure of PHI or ePHI shall prevail over any provisions in the Underlying Agreement regarding the use or disclosure of PHI or ePHI that conflict or appear inconsistent with any provision in this Addendum.

F. Interpretation of Addendum.

(1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.

(2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

G. Notices to County. All notifications required to be given by Contractor to County pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to both of the addresses listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

County HIPAA Privacy Officer: HIPAA Privacy Manager

County HIPAA Privacy Officer Address: P.O. Box 1569
Riverside, CA 92502

County HIPAA Privacy Officer Fax Number: (951) 955-HIPAA or (951) 955-4472

----- TO BE COMPLETED BY COUNTY PERSONNEL ONLY -----

County Departmental Officer: _____

County Departmental Officer Title: _____

County Department Address: _____

County Department Fax Number: _____