

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

548



FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
April 20, 2010

SUBJECT: Professional Services Agreement for Modern Diagnostics Medical Services, Inc.

RECOMMENDED MOTION: Move that the Board of Supervisors:

- 1) Approve and authorize the Chairman of the Board to execute the professional services agreement with Modern Diagnostics Medical Services, Inc. for an aggregate amount of \$139,000 annually which contains an option to renew the agreement for two additional one-year periods; and
- 2) Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise the renewal option, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates.

BACKGROUND: The intra-operative monitoring services are requested by Riverside County Regional Medical Center's (RCRMC) surgeons for the monitoring of patients while in surgery. These services include experienced and certified neurophysiologist and the equipment to perform intra-operative studies.

(continued – 2 pages in total)

Douglas D. Bagley

Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$36,000.	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	09/10

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

C.E.O. RECOMMENDATION:

APPROVE
Debra Courmoyer
BY: _____
Debra Courmoyer

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: April 20, 2010
xc: RCRMC, Purchasing

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

Prev. Agn. Ref.:

District:

Agenda Number:

3.62

COPIES FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
DATE 4/1/2010
BY: TAWNY V. LIEU
Departmental Concurrence
Purchasing: Mark Seiler, Assistant Director

Policy Policy
Consent Consent
Dep't Recomm.:
Per Exec. Ofc.:

SUBJECT: Professional Services Agreement for Modern Diagnostics Medical Services, Inc.

BACKGROUND (Continued):

On behalf of RCRMC, County Purchasing released a Request for Proposal (RFP #MCARC123), to secure intra-operative monitoring services for the hospital. Solicitations were sent to four prospective vendors specializing in these services and advertised on the County's Internet/Website. Three proposals were received however, one vendor withdrew their bid. The two remaining proposals were evaluated by three Operating Room (OR) staff from RCRMC.

The evaluation team reviewed and scored each proposal based on the bidder's overall responsiveness to the RFP requirements, their experience with other comparable size hospital facilities, the ability to perform the services and the overall cost to the County. Modern Diagnostics Medical Services, Inc. received the highest score therefore, selected as the recommended awarded vendor.

PRICE REASONABLENESS:

Of the two responsive bids, the overall scores were 19.23 and 87.03. Based on the overall score, Modern Diagnostic received the highest score of 87.03, with the best rates.

Formerly, RCRMC has utilized Modern Diagnostics for its intra-operative monitoring services and was the incumbent vendor. Their proposed rate as a result of this RFP increased slightly by \$30.00 for each procedure in comparison to what they originally proposed in 2005.

FINANCIAL IMPACT:

The current fiscal year total cost is based on the last three months of service for FY09/10 in the amount of \$36,000.

Funding for this service is 100% Hospital Enterprise funded and does not require additional County funds.

REVIEW/APPROVAL:

County Counsel
County Purchasing

DB:ns

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
MODERN DIAGNOSTICS MEDICAL SERVICES, INC.**

1 This Agreement is made and entered into by and between the County of
2 Riverside, a political subdivision of the State of California, through its Medical Center,
3 (Riverside County Regional Medical Center) hereinafter referred to as COUNTY, and
4 Modern Diagnostics Medical Services, Inc., hereinafter referred to as
5 CONTRACTOR.

6 WHEREAS, Government Code Section 31000 authorizes the COUNTY to
7 contract for special services to be provided by persons/entities who are specially
8 trained, experienced and competent to perform the services required; and

9 WHEREAS, Contractor has the expertise, special skills, knowledge and
10 experience to perform the duties set out herein;

11 NOW THEREFORE, in consideration of the mutual promises, covenants and
12 conditions hereinafter contained the PARTIES hereto mutually agree as provided on
13 pages 1 through 26, Exhibit A, and Attachment A, attached hereto and incorporated
14 herein.

15 **1.0 HIPAA Business Associate Agreement**

16 The CONTRACTOR in this Agreement is subject to all relevant
17 requirements contained in the Health Insurance Portability and Accountability Act of
18 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, and the laws and
19 regulations promulgated subsequent thereto. CONTRACTOR shall adhere to all
20 terms and conditions as outlined and specified in **Attachment A**, consisting of 7
21 pages, attached hereto and by this reference incorporated herein.

22 **2.0 DESCRIPTION OF SERVICES**

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23 2.1 CONTRACTOR shall provide Riverside County Regional Medical
24 Center (RCRMC) with intra-operative monitoring services, including equipment and
25 neurophysiologist, as ordered by designated representatives and request by
26 surgeon. Such services will include but may not be limited to, somatosensory evoked
27 potentials, myogenic transcranial electrical motor evoked potentials, pedicle screw
28 stimulation (electromyography), free running electromyography,
29 electroencephalography, brainstem auditory evoked potentials, visual evoked
30 potentials, and facial nerve monitoring.

31 2.2 CONTRACTOR's neurophysiologist shall arrive at the operating
32 theater prior to entry of patient, make the introduction and place appropriate surface
33 electrodes. During the course of surgery, the neurophysiologist will communicate
34 with surgeons, anesthesiologists and nurses as required in the course of performing
35 their duties.

36 2.3 For each monitoring session performed, the neurophysiologist
37 completes the study, surgical monitoring event log, invoicing information, other
38 appropriate paperwork, and leaves said paperwork in accordance with department's
39 instructions.

40 2.4 All neurophysiologist's operate and clean equipment as directed
41 and provide patient protection in accordance with prescribed safety standards.

42 2.5 CONTRACTOR agrees to have personnel and equipment
43 available to the COUNTY twenty-four (24) hours a day, seven (7) days a week, three
44 hundred sixty-five (365) days a year.

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- 45 2.6 CONTRACTOR Neurophysiologist Requirements:
- 46 a. CONTRACTOR shall conduct primary source
- 47 verification of licensure on hire and prior to expiration of licenses
- 48 and will provide COUNTY with a copy of the primary source
- 49 verification of each licensed neurophysiologist.
- 50 b. CONTRACTOR must receive approval from
- 51 COUNTY prior to first assignment.
- 52 c. CONTRACTOR shall adhere to all RCRMC
- 53 policies.
- 54 d. CONTRACTOR shall cooperate with COUNTY's
- 55 evaluation process beginning with the first three visits and
- 56 annually, thereafter.
- 57 e. CONTRACTOR performing intra-operative studies
- 58 shall have CNIM (Intra-Operative Registration).
- 59 f. CONTRACTOR must have annual health
- 60 screening to include a TB test, and or Chest X-Ray (verifying
- 61 absence of active disease), a record of vaccination for Measles,
- 62 Mumps, Rubella, (MMR) series or record of positive MMR titer,
- 63 proof of immunization of Diphtheria, Tetanus, Trivalent Polio,
- 64 Hepatitis B, and a general physical examination clearance for all
- 65 CONTRACTOR neurophysiologist. All records pertaining to this

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66 shall be kept on file in CONTRACTOR's office, and made
67 available to COUNTY upon request.

68 g. CONTRACTOR shall be orientated to COUNTY
69 fire, disaster, department specific procedures, and infection
70 control practices by COUNTY.

71 h. CONTRACTOR shall possess and wear a
72 photographic identification card supplied by CONTRACTOR.

73 i. CONTRACTOR shall be able to speak, write and
74 read the English language.

75 2.7 CONTRACTOR Equipment Requirements:

76 a. CONTRACTOR shall provide COUNTY with Intra-
77 Operative Monitoring equipment on-site.

78 b. CONTRACTOR shall provide, maintain in good
79 operating condition and repair all related equipment necessary
80 for the provision of services and provide documentation to Plant
81 Operations in accordance with COUNTY's equipment
82 management plan. The reports of equipment maintenance shall
83 include upgrades and equipment status.

84 c. CONTRACTOR shall provide equipment
85 maintenance logs and calibration certification as required by
86 Joint Commission, for all equipment brought on-site.

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87 d. CONTRACTOR shall provide COUNTY with
88 quarterly reports of water testing with documentation of actions
89 for any issues.

90 e. CONTRACTOR shall provide COUNTY with
91 verification of competency for CONTRACTOR staff performing
92 equipment maintenance to include, job description, licensure
93 and/or certifications and evidence of training/education.

94 f. CONTRACTOR shall adhere to COUNTY
95 inspections verifying competency of CONTRACTOR staff.

96 g. CONTRACTOR shall check in with Materials
97 Management and then with Plan Operations each time they are
98 on-site.

99 h. CONTRACTOR shall adhere and cooperate with
100 COUNTY inspection of all equipment each time CONTRACTOR
101 is on-site.

102 i. CONTRACTOR equipment shall show evidence of
103 regular preventative maintenance and service in accordance with
104 the equipment manufacturer's recommendation and/or
105 specifications.

106 **3.0 PERIOD OF PERFORMANCE**

107 This Agreement shall be effective as of the date of final execution and
108 continue in effect through June 30, 2010, with the option to renew through the

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109 County's annual amendment process for two-(2) additional fiscal years in one-year
110 increments, unless terminated as specified in Section 6.0 Termination.

111 **4.0 COMPENSATION**

112 The COUNTY shall pay the CONTRACTOR for services performed and
113 expenses incurred in accordance with the terms of **Exhibit A**, Payment Provisions.

114 4.1 Maximum payments by COUNTY to all CONTRACTORS shall
115 not exceed the aggregate amount of one hundred thirty-nine thousand dollars
116 (\$139,000) annually. The COUNTY is not responsible for any fees or costs incurred
117 above or beyond the contracted amount and shall have no obligation to purchase any
118 specified amount of services or products. COUNTY shall not be responsible for
119 payment of any of CONTRACTOR's expense related to this Agreement.

120 4.2 No price increases will be permitted during the first year of this
121 Agreement. All price decreases (for example, if CONTRACTOR offers lower prices
122 to another governmental entity) will automatically be extended to the COUNTY. The
123 COUNTY requires written proof satisfactory to COUNTY of cost increases prior to
124 any approved price adjustment. After the first year of the award, a minimum of 30-
125 days advance notice in writing is required to be considered and approved by
126 COUNTY. No retroactive price adjustments will be considered. Any price increases
127 must be stated in a written amendment to this Agreement.

128 4.3 Said compensation shall be paid in accordance with an invoice
129 submitted to COUNTY by CONTRACTOR, and COUNTY shall pay the invoice within
130 thirty (30) working days of receipt of the invoice. In accordance with California

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131 Government Code Section 926.10, COUNTY is not allowed to pay excess interest
132 and late charges.

133 4.4 All invoices submitted by CONTRACTOR shall include the
134 following:

- 135 ▪ Invoice number, invoice date, remittance address, and
136 invoice total amount; and
- 137 ▪ Must reflect the services rendered, including the patient
138 name, patient account number, referring physician, the date
139 and time services were rendered, the procedure name, the
140 CPT Code, and the rate charged.

141 4.5 All invoices submitted by CONTRACTOR shall be addressed to,
142 Riverside County Regional Medical Center, Accounts Payable, 26520 Cactus
143 Avenue, Moreno Valley, CA. 92555.

144 **5.0 ASSURANCES**

145 CONTRACTOR hereby agrees that, where applicable, services
146 provided hereunder will be performed in harmony with COUNTY policy and
147 procedure.

148 5.1 CONTRACTOR warrants that it is, and will remain, in compliance
149 with all State and Federal laws and the standards of the Joint Commission.

150 5.2 CONTRACTOR certifies that it is aware of the Occupational
151 Safety and Health Administration (OSHA) regulations of the U.S. Department of

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152 Labor, the derivative Cal/OSHA standards and laws and regulations relating thereto,
153 and shall comply therewith as to all relative elements under this Agreement.

154 **6.0 TERMINATION**

155 6.1 COUNTY may terminate this Agreement without cause upon 30
156 days written notice served upon the CONTRACTOR stating the extent and effective
157 date of termination.

158 6.2 COUNTY may, upon five (5) days written notice, terminate this
159 Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply
160 with the terms of this Agreement or fails to make progress so as to endanger
161 performance and does not immediately cure such failure. In the event of such
162 termination, the COUNTY may proceed with the work in any manner deemed proper
163 by COUNTY.

164 6.3 After receipt of the notice of termination, CONTRACTOR shall:
165 (a) Stop all work under this Agreement on the date specified in the notice of
166 termination; and (b) Transfer to COUNTY and deliver in the manner as directed by
167 COUNTY any materials, reports or other products which, if the Agreement had been
168 completed or continued, would have been required to be furnished to COUNTY.

169 6.4 After termination, COUNTY shall make payment only for
170 CONTRACTOR's performance up to the date of termination in accordance with this
171 Agreement and at the rates set forth in Exhibit A.

172 6.5 CONTRACTOR's rights under this Agreement shall terminate
173 (except for fees accrued prior to the date of termination) upon dishonesty or a willful

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174 or material breach of this Agreement by CONTRACTOR; or in the event of
175 CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the
176 terms of this Agreement. In that event, CONTRACTOR shall not be entitled to any
177 further compensation under this Agreement.

178 6.6 The rights and remedies of COUNTY provided in this section
179 shall not be exclusive and are in addition to any other rights and remedies provided
180 by law or this Agreement.

181 **7.0 CONFIDENTIALITY**

182 CONTRACTOR agrees to protect from unauthorized disclosure of
183 names and other identifying information concerning either persons receiving services
184 under this Agreement or persons whose names or other identifying information
185 becomes known to CONTRACTOR as a result of services performed under this
186 Agreement, except statistical information not identifying any such person.

187 7.1 CONTRACTOR shall not disclose, except as otherwise
188 specifically permitted by this Agreement or authorized by the client or client's
189 representative, any such identifying information to anyone other than authorized
190 COUNTY personnel without prior written authorization from the COUNTY.

191 7.2 For the purpose of this paragraph, "identify" shall include, but not
192 limited to, name, identifying number, symbol, or other identifying particular assigned
193 to the individual, such as finger or voiceprint or photograph.

194 **8.0 HOLD HARMLESS/INDEMNIFICATION**

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195 CONTRACTOR shall indemnify and hold harmless the County of
196 Riverside, its Agencies, Districts, Special Districts and Departments, their respective
197 directors, officers, Board of Supervisors, elected and appointed officials, employees,
198 agents and representatives (individually and collectively hereinafter referred to as
199 Indemnitees) from any liability whatsoever, based or asserted upon any services of
200 CONTRACTOR, its officers, employees, subcontractors, agents or representatives
201 arising out of or in any way relating to this Agreement, including but not limited to
202 property damage, bodily injury, or death or any other element of any kind or nature
203 whatsoever arising from the performance of CONTRACTOR, its officers, employees,
204 subcontractors, agents or representatives Indemnitors from this Agreement.
205 CONTRACTOR shall defend, at its sole expense, all costs and fees including, but not
206 limited, to attorney fees, cost of investigation, defense and settlements or awards, the
207 Indemnitees in any claim or action based upon such alleged acts or omissions. With
208 respect to any action or claim subject to indemnification herein by CONTRACTOR,
209 CONTRACTOR shall, at their sole cost, have the right to use counsel of their own
210 choice and shall have the right to adjust, settle, or compromise any such action or
211 claim without the prior consent of COUNTY; provided, however, that any such
212 adjustment, settlement or compromise in no manner whatsoever limits or
213 circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

214 CONTRACTOR'S obligation hereunder shall be satisfied when
215 CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving
216 COUNTY from any liability for the action or claim involved.

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217 The specified insurance limits required in this Agreement shall in no
218 way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold
219 harmless the Indemnitees herein from third party claims.

220 In the event there is conflict between this clause and California Civil
221 Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782.
222 Such interpretation shall not relieve the CONTRACTOR from indemnifying the
223 Indemnitees to the fullest extent allowed by law.

224 **9.0 INSURANCE**

225 9.1 Without limiting or diminishing the CONTRACTOR'S obligation to
226 indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and
227 maintain or cause to be maintained, at its sole cost and expense, the following
228 insurance coverage's during the term of this Agreement.

229 9.2 WORKERS' COMPENSATION:

230 If the CONTRACTOR has employees as defined by the State of
231 California, the CONTRACTOR shall maintain statutory Workers' Compensation
232 Insurance (Coverage A) as prescribed by the laws of the State of California. Policy
233 shall include Employers' Liability (Coverage B) including Occupational Disease with
234 limits not less than **\$1,000,000** per person per accident. The policy shall be endorsed
235 to waive subrogation in favor of The County of Riverside, and, if applicable, to
236 provide a Borrowed Servant/Alternate Employer Endorsement.

237 9.3 Commercial General Liability:

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238 Commercial General Liability insurance coverage, including but
239 not limited to, premises liability, contractual liability, products and completed
240 operations liability, personal and advertising injury, and cross liability coverage,
241 covering claims which may arise from or out of CONTRACTOR'S performance of its
242 obligations hereunder. Policy shall name the County of Riverside, its Agencies,
243 Districts, Special Districts, and Departments, their respective directors, officers,
244 Board of Supervisors, employees, elected or appointed officials, agents or
245 representatives as Additional Insureds. Policy's limit of liability shall not be less than
246 \$1,000,000 per occurrence combined single limit. If such insurance contains a
247 general aggregate limit, it shall apply separately to this agreement or be no less than
248 two (2) times the occurrence limit.

249 9.4 VEHICLE LIABILITY:

250 If vehicles or mobile equipment are used in the performance of
251 the obligations under this Agreement, then CONTRACTOR shall maintain liability
252 insurance for all owned, non-owned or hired vehicles so used in an amount not less
253 than \$1,000,000 per occurrence combined single limit. If such insurance contains a
254 general aggregate limit, it shall apply separately to this agreement or be no less than
255 two (2) times the occurrence limit. Policy shall name the County of Riverside, its
256 Agencies, Districts, Special Districts, and Departments, their respective directors,
257 officers, Board of Supervisors, employees, elected or appointed officials, agents or
258 representatives as Additional Insureds.

259 9.5 PROFESSIONAL LIABILITY:

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260 CONTRACTOR shall maintain Professional Liability Insurance
261 providing coverage for the CONTRACTOR's performance of work included within this
262 Agreement, with a limit of liability of not less than **\$1,000,000** per occurrence and
263 **\$2,000,000** annual aggregate. If CONTRACTOR's Professional Liability Insurance is
264 written on a claims made basis rather than an occurrence basis, such insurance shall
265 continue through the term of this Agreement and CONTRACTOR shall purchase at
266 his sole expense either 1) an Extended Reporting Endorsement (also known as Tail
267 Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back
268 to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through
269 Certificates of Insurance that CONTRACTOR has Maintained continuous coverage
270 with the same or original insurer. Coverage provided under items; 1), 2) or 3) will
271 continue for a period of five (5) years beyond the termination of this Agreement.

272 9.6 GENERAL INSURANCE PROVISIONS - ALL LINES:

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

279 B. The CONTRACTOR'S insurance carrier(s) must declare
280 its insurance deductibles or self-insured retentions. If such deductibles or self-
281 insured retentions exceed \$500,000 per occurrence such deductibles and/or

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282 retentions shall have the prior written consent of the County Risk Manager before the
283 commencement of operations under this Agreement. Upon notification of deductibles
284 or self insured retention's unacceptable to the COUNTY, and at the election of the
285 Country's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or
286 eliminate such deductibles or self-insured retention's as respects this Agreement with
287 the COUNTY, or 2) procure a bond which guarantees payment of losses and related
288 investigations, claims administration, and defense costs and expenses.

289 C. CONTRACTOR shall cause CONTRACTOR'S insurance
290 carrier(s) to furnish the County of Riverside with either 1) a properly executed original
291 Certificate(s) of Insurance and certified original copies of Endorsements effecting
292 coverage as required herein, or 2) if requested to do so orally or in writing by the
293 County Risk Manager, provide original Certified copies of policies including all
294 Endorsements and all attachments thereto, showing such insurance is in full force
295 and effect. Further, said Certificate(s) and policies of insurance shall contain the
296 covenant of the insurance carrier(s) that thirty (30) days written notice shall be given
297 to the County of Riverside prior to any material modification, cancellation, expiration
298 or reduction in coverage of such insurance. In the event of a material modification,
299 cancellation, expiration, or reduction in coverage, this Agreement shall terminate
300 forthwith, unless the County of Riverside receives, prior to such effective date,
301 another properly executed original Certificate of Insurance and original copies of
302 endorsements or certified original policies, including all endorsements and
303 attachments thereto evidencing coverage's set forth herein and the insurance

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304 required herein is in full force and effect. ***CONTRACTOR shall not commence***
305 ***operations until the COUNTY has been furnished original Certificate (s) of***
306 ***Insurance and certified original copies of endorsements or policies of***
307 ***insurance including all endorsements and any and all other attachments as***
308 ***required in this Section. An individual authorized by the insurance carrier to***
309 ***do so on its behalf shall sign the original endorsements for each policy and the***
310 ***Certificate of Insurance.***

311 D. It is understood and agreed to by the parties hereto that
312 the CONTRACTOR'S insurance shall be construed as primary insurance, and the
313 COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-
314 insured programs shall not be construed as contributory.

315 E. If, during the term of this Agreement or any extension
316 thereof, there is a material change in the scope of services; or, there is a material
317 change in the equipment to be used in the performance of the scope of work which
318 will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or,
319 the term of this Agreement, including any extensions thereof, exceeds five (5) years
320 the COUNTY reserves the right to adjust the types of insurance required under this
321 Agreement and the monetary limits of liability for the insurance coverage's currently
322 required herein, if; in the County Risk Manager's reasonable judgment, the amount or
323 type of insurance carried by the CONTRACTOR has become inadequate.

324 F. CONTRACTOR shall pass down the insurance obligations
325 contained herein to all tiers of subcontractors working under this Agreement.

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326 G. The insurance requirements contained in this Agreement
327 may be met with a program(s) of self-insurance acceptable to the COUNTY.

328 H. CONTRACTOR agrees to notify COUNTY of any claim by
329 a third party or any incident or event that may give rise to a claim arising from the
330 performance of this Agreement.

331 **10.0 AVAILABILITY OF FUNDING**

332 The COUNTY obligation for payment of any contract beyond the current
333 fiscal year end is contingent upon the availability of funding from which payment can
334 be made. No legal liability on the part of the COUNTY shall arise for payment
335 beyond June 30 of the calendar year unless funds are made available for such
336 performance.

337 **11.0 RECORDS AND DOCUMENTS**

338 CONTRACTOR shall make available, upon written request by and duly
339 authorized Federal, State or COUNTY agency, a copy of this Agreement and such
340 books, documents and records as are necessary to certify the nature and extent of
341 the costs of the services provided by CONTRACTOR. All such CONTRACTOR shall
342 maintain books and records for at least five (5) years from the termination of this
343 Agreement.

344 12.1 CONTRACTOR to provide COUNTY with reports and
345 information relative to this Agreement and in accordance with terms set forth herein,
346 as may be requested by COUNTY.

347 **12.0 MONITORING**

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348 CONTRACTOR hereby agrees to establish procedures for self-
349 monitoring and shall permit an appropriate official of the COUNTY, State or Federal
350 government to monitor, access, or evaluate CONTRACTOR'S performance under
351 this Agreement upon reasonable notice to CONTRACTOR and at any reasonable
352 time.

353 **13.0 LICENSE**

354 CONTRACTOR shall, through the term of this Agreement, maintain all
355 licenses necessary for the provision of the services hereunder and required by the
356 laws and regulations of the United States, the State of California, County of
357 Riverside, and all other governmental agencies. CONTRACTOR shall notify
358 COUNTY immediately, in writing, of inability to obtain or maintain such license. Said
359 inability shall be cause for termination of this Agreement.

360 13.1 CONTRACTOR shall ensure that CONTRACTOR'S employees,
361 agents, and subcontractors performing services under the terms of this Agreement
362 are in compliance with all relative licensing requirements. CONTRACTOR hereby
363 agrees to notify COUNTY immediately, in writing, of inability of CONTRACTOR or
364 any of CONTRACTOR'S employees, agents and subcontractors to obtain or maintain
365 such license(s). Said inability shall be cause for termination of this Agreement.

366 13.2 COPY REQUIRED. A copy of each such license, permit,
367 approval, waiver, exemption, registration, accreditation, and certificate shall be
368 provided to Contracts Administration.

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369 13.3 Further, CONTRACTOR hereby agrees to abide by the
370 standards of medical practice of the profession when performing services hereunder.

371 **14.0 NONDISCRIMINATION AND ELIGIBILITY**

372 The CONTRACTOR shall not discriminate in the provision of services,
373 allocation of benefits, accommodation in facilities, or employment of personnel, on
374 the basis of ethnic group identification, race, color, creed, ancestry, religion, national
375 origin, sexual preference, sex, age (over 40), marital status, medical attention, or
376 physical or mental handicap, and shall comply with all other requirements of law
377 regarding non discrimination and affirmative action including those laws pertaining to
378 the prohibition of discrimination against qualified handicapped persons in all
379 programs or activities.

380 14.1 For the purpose of this Agreement, distinctions on the grounds of
381 race, religion, color, sex, national origin, age, or physical or mental handicap include
382 but at not limited to the following:

383 A. Denying an eligible person or providing to an eligible
384 person any services or benefit which is different, or is provided in a different manner
385 or at a different time from that provided to other eligible persons under this
386 Agreement.

387 B. Treatment in any matter related to his receipt of any
388 service, except when necessary for infection control.

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389 C. Restricting an eligible person differently in any way in the
390 enjoyment of any advantage or privilege enjoyed by others receiving similar service
391 or benefit.

392 D. Treating an eligible person differently from others in
393 determining whether he satisfied any eligibility, membership, or other requirement or
394 condition which individuals must meet in order to be provided a similar service or
395 benefit.

396 E. The assignment of times or places for the provision of
397 services on the basis of race, religion, color, sex, national origin, age, or physical or
398 mental handicap of the eligible person to be served.

399 **15.0 CONFLICT OF INTEREST**

400 CONTRACTOR and CONTRACTOR'S employees shall have no
401 interest, and shall not acquire any interest, direct or indirect, which will conflict in any
402 manner or degree with the performance of services required under this Agreement.

403 **16.0 ALTERATION**

404 No alteration or variation of the terms of this Agreement shall be valid
405 unless made in writing and signed by the parties hereto, and no oral understanding
406 or agreement not incorporated herein, shall be binding on any of the parties hereto.

407 16.1 Only the County Board of Supervisors or County Purchasing
408 Agent may authorize the alteration or revision of this Agreement. The parties
409 expressly recognize that COUNTY personnel are without authorization to either
410 change or waive any requirements of this Agreement.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
MODERN DIAGNOSTICS MEDICAL SERVICES, INC.**

411 **17.0 ASSIGNMENT**

412 CONTRACTOR may not delegate the obligations hereunder, either in
413 whole or in part, without prior written consent of COUNTY provided, however,
414 obligations undertaken by CONTRACTOR pursuant to this Agreement may be
415 carried out by means of subcontracts if approved by COUNTY. No subcontract shall
416 terminate or alter the responsibilities of the CONTRACTOR to COUNTY pursuant to
417 this Agreement. CONTRACTOR may not assign the rights hereunder, either in
418 whole or in part, without prior written consent of COUNTY. Any attempted
419 assignment or delegation in derogation of this paragraph shall be void. A change in
420 the business structure of CONTRACTOR, including but not limited to, change in the
421 majority ownership, change in the form of CONTRACTOR'S business organization,
422 management of CONTRACTOR, CONTRACTOR'S ownership of other business
423 dealing with CONTRACTOR under this Agreement, or filing of bankruptcy by
424 CONTRACTOR, shall be deemed an assignment for purposes of this paragraph.

425 **18.0 ADMINISTRATION**

426 The County of Riverside Purchasing Agent, or designee, shall
427 administer this Agreement on behalf of the COUNTY. The Purchasing department is
428 to serve as its liaison with CONTRACTOR in connection with this agreement.

429 **19.0 WAIVER**

430 Any waiver by COUNTY of any breach of any one or more of the terms
431 of this Agreement shall not be construed to be a waiver of any subsequent or other
432 breach of the same or of any other term thereof. Failure on the part of the COUNTY

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433 to require exact, full and complete compliance with any terms of this Agreement shall
434 not be construed as in any manner changing the terms hereof or stopping COUNTY
435 from enforcement hereof.

436 **20.0 JURISDICTION, VENUE, SEVERABILITY**

437 This Agreement and its construction and interpretation as to validity,
438 performance and breach shall be construed under the laws of the State of California.
439 Any legal action related to this Agreement shall be filed in the appropriate court
440 (Municipal or Superior) of the State of California located in Riverside, California. In
441 the event any provision in this Agreement is held by a court of competent jurisdiction
442 to be invalid, void, or unenforceable, the remaining provisions will nevertheless
443 continue in full force without being impaired or invalidated in any way.

444 **21.0 INDEPENDENT CONTRACTOR**

445 The CONTRACTOR is, for purposes arising out of this contract, an
446 independent contractor and shall not be deemed an employee of the COUNTY. It is
447 expressly understood and agreed that the CONTRACTOR shall in no event, as a
448 result of this contract, be entitled to any benefits to which COUNTY employees are
449 entitled, including but not limited to overtime, any retirement benefits, worker's
450 compensation benefits, and injury leave or other leave benefits. CONTRACTOR
451 hereby holds COUNTY harmless from any and all claims that may be made against
452 COUNTY based upon any contention by any third party that an employer-employee
453 relationship exists by reason of this agreement.

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454 21.1 It is further understood and agreed by the parties hereto that
455 CONTRACTOR in the performance of its obligation hereunder is subject to the
456 control or direction of COUNTY merely as to the result to be accomplished by the
457 services hereunder agreed to be rendered and performed and not as to the means
458 and methods for accomplishing the results.

459 **22.0 SUBCONTRACT FOR WORK OR SERVICES**

460 No contract shall be made by the CONTRACTOR with any party for
461 furnishing any of the work or services herein contained without the prior written
462 approval of the COUNTY Contract Administrator but this provision shall not require
463 the approval of contracts of employment between the CONTRACTOR and personnel
464 assigned for services there under, or for parties named in the proposal and agreed to
465 under any resulting contract.

466 **23.0 INTEREST OF CONTRACTOR**

467 The CONTRACTOR covenants that it presently has no interest,
468 including but not limited to, other projects or independent contracts, and shall not
469 acquire any such interest, direct or indirect, which would conflict in any manner or
470 degree with the performance of services required to be performed under this
471 contract. The CONTRACTOR further covenants that in the performance of this
472 contract, no person having any such interest shall be employed or retained by it
473 under this contract.

474 **24.0 CONDUCT OF CONTRACTOR**

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475 24.1 The CONTRACTOR agrees to inform the COUNTY of all the
476 CONTRACTOR's interest, if any, which are or which the CONTRACTOR believes to
477 be incompatible with any interest of the COUNTY.

478 24.2 The CONTRACTOR shall not, under circumstances, which might
479 reasonably be interpreted as an attempt to influence the recipient in the conduct of
480 his duties, accept any gratuity or special favor from individuals or organizations with
481 whom the CONTRACTOR is doing business or proposing to do business, in
482 accomplishing the work under the contract.

483 24.3 The CONTRACTOR shall not use for personal gain or make
484 other improper use of privileged information, which is acquired in connection with his
485 contract. In this connection, the term 'privileged information' includes, but is not
486 limited to, unpublished information relating to technological and scientific
487 development; medical, personnel, or security records of the individuals; anticipated
488 materials requirements or pricing actions; and knowledge of selection of
489 CONTRACTOR or subcontractors in advance of official announcement.

490 24.4 The CONTRACTOR or employees thereof shall not offer gifts,
491 gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

492 **25.0 DISALLOWANCE**

493 In the event the CONTRACTOR receives payment for services under
494 this contract which is later disallowed for nonconformance with the terms and
495 conditions herein by the COUNTY, the CONTRACTOR shall promptly refund the
496 disallowed amount to the COUNTY on request, or at its option, the COUNTY may

**PROFESSIONAL SERVICES AGREEMENT
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497 offset the amount disallowed from any payment due to the CONTRACTOR under any
498 contract with the COUNTY.

499 **26.0 RIGHT TO ACQUIRE EQUIPMENT AND SERVICES**

500 Nothing in this agreement shall prohibit the COUNTY from acquiring the
501 same type or equivalent equipment and/or service from other sources, when deemed
502 by the COUNTY to be in its best interest.

503 **27.0 FORCE MAJEURE**

504 27.1 In the event CONTRACTOR is unable to comply with any
505 provision of this agreement due to causes beyond their control such as acts of God,
506 acts of war, civil disorders, or other similar acts, CONTRACTOR shall not be held
507 liable to COUNTY for such failure to comply.

508 27.2 In the event COUNTY is unable to comply with any provision of
509 this agreement due to causes beyond its control relating to acts of God, acts of war,
510 civil disorders, or other similar acts, COUNTY shall not be held liable to
511 CONTRACTOR for such failure to comply.

512 **28.0 EDD REPORTING REQUIREMENTS**

513 In order to comply with child support enforcement requirements of the
514 State of California, the County of Riverside may be required to submit a Report of
515 Independent Contractor(s) form **DE 542** to the Employment Development
516 Department. The selected contractor agrees to furnish the required Contractor data
517 and certifications to the County of Riverside within 10 days of notification of award of
518 contract when required by the EDD.

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519 It is expressly understood that this data will be transmitted to
520 governmental agencies charged with the establishment and enforcement of child
521 support orders and for no other purposes and will be held confidential by those
522 agencies. Failure of the contractor to timely submit the data and/or certificates
523 required may result in contract being awarded to another Contractor. In the event a
524 contract has been issued, failure of the Contractor to comply with all federal and state
525 reporting requirements for child support enforcement or to comply with all lawfully
526 served Wage and Earnings Assignments Orders and Notices of Assignment shall
527 constitute a material breach of contract. Failure to cure such breach within 60
528 calendar days of notice from the County shall constitute grounds for termination of
529 the contract.

530 If you have any questions concerning this reporting requirement, please call (916)
531 657-0529. You may also contact your local Employment Tax Customer Service Office listed in your
532 telephone directory in the State Government section under "Employment Development Department,"
533 or you may access their Internet site at www.edd.ca.gov.

534 **29.0 ENTIRE AGREEMENT**

535 This Agreement, including any Statement(s) of Work entered into
536 pursuant to it, constitutes the entire agreement of the parties hereto with respect to its
537 subject matter and supersedes all prior and contemporaneous representations,
538 proposals, discussions and communications, whether oral or in writing. This contract
539 may be modified only in writing and shall be enforceable in accordance with its terms
540 when signed by each of the parties hereto.

PAYMENT PROVISION
Intra-Operative Monitoring Services
Modern Diagnostics Medical Services, Inc.

PROCEDURE	CPT CODE	COST
Somatosensory Spinal Cord Surgical Monitoring Upper or Lower Extremities Including Dermatomes ***Per Hour or Fraction Thereof Baseline Study	95920 / 95925 / 95926	\$180.00
EMG Electromyography and Nerve Monitoring ***Per Hour or Fraction Thereof Baseline Study	95920 / 95860	\$180.00
MEP Motor Evoked Potential ***Per Hour or Fraction Thereof Baseline Study	95928	\$180.00
Brainstem Auditory Surgical Monitoring ***Per Hour or Fraction Thereof Baseline Study	95920 / 92585	\$180.00
Facial Nerve Monitoring ***Per Hour or Fraction Thereof Baseline Study	95920 / 95925	\$180.00
Electrocorticogram / Cortical Mapping ***Per Hour or Fraction Thereof Baseline Study	95829 / 95961 / 95962	\$180.00
EEG Surgical Monitoring (Nonintracranial Surgery –e.g. Carotid Surgery) ***Per Hour or Fraction Thereof Baseline Study	95955	\$180.00

NOTE:

- Charges are per fraction hour rounded to nearest ½ hour. There is a minimum 4 hour charge per procedure.
- Insured Patients will be billed directly by CONTRACTOR at no cost to COUNTY.
- Non-Insured patients will be billed according to the above referenced fee schedule.

PAYMENT PROVISION
 Intra-Operative Monitoring Services
Modern Diagnostics Medical Services, Inc.

STAT CHARGE / STANDBY / INTERPRETATION		
<p>- Stat Charge Applies to orders placed after 3:00 PM for service the same day or orders requiring service on Saturday, Sunday, and COUNTY observed Holidays or orders which requires service within 4 hours of call.</p> <p>STAT also applies to that portion of a surgery which extends beyond 3:00 PM on weekdays.</p>	99050 / 99054	\$70.00
<p>- Standby A per half hour charge will be added to any test which requires that the technician standby when the patient is not ready for testing at the prescribed time.</p>		\$60.00 (each ½ hour)
<p>- Cancellation Fee Weekdays (less than 24 hours notice)</p>		\$400.00
<p>- Cancellation Fee on Weekends (less than 24 hours notice)</p>		\$450.00

HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
MODERN DIAGNOSTICS MEDICAL SERVICES, INC.

1 This HIPAA Business Associate Agreement Addendum ("Addendum") supplements, and
2 is made part of the Professional Services Agreement (the "Underlying Agreement") between the
3 County of Riverside ("County") and **Modern Diagnostics Medical Services, Inc.** ("Contractor")
4 as of the date of approval by both parties (the "Effective Date").

5 RECITALS

6 WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to
7 which Contractor provides services to County, and in conjunction with the provision of such
8 services certain Protected Health Information ("PHI") and/or certain electronic Protected Health
9 Information (ePHI) may be made available to Contractor for the purposes of carrying out its
10 obligations under the Underlying Agreement; and,

11 WHEREAS, the provisions of the Health Insurance Portability and Accountability Act,
12 Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR,
13 Parts 160 and 164 (the "Privacy Rule") and/or Part 162 (the "Security Rule"), as may be
14 amended from time to time, which are applicable to the protection of any disclosure of PHI
15 and/or ePHI pursuant to the Underlying Agreement; and,

16 WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

17 WHEREAS, Contractor, when a recipient of PHI and/or ePHI from County, is a Business
18 Associate as defined in the Privacy Rule; and,

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

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

- 23 1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have
24 the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be
25 amended from time to time.
- 26 2. Scope of Use and Disclosure by Contractor of County Disclosed PHI and/or ePHI
- 27 A. Contractor shall be permitted to use PHI and/or ePHI disclosed to it by the County:
- 28 (1) On behalf of the County, or to provide services to the County for the purposes
29 contained herein, if such use or disclosure would not violate the Privacy Rule
30 and/or Security Rule;
- 31 (2) As necessary to perform any and all of its obligations under the Underlying
32 Agreement.
- 33 B. Unless otherwise limited herein, in addition to any other uses and/or disclosures
34 permitted or authorized by this Addendum or required by law, Contractor may:

HIPAA BUSINESS ASSOCIATE AGREEMENT

Between the County of Riverside and
MODERN DIAGNOSTICS MEDICAL SERVICES, INC.

- 1 (1) Use the PHI and/or ePHI in its possession for its proper management and
2 administration and to fulfill any legal obligations.
- 3 (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose
4 of Contractor's proper management and administration or to fulfill any legal
5 responsibilities of Contractor. Contractor may disclose PHI and/or ePHI as
6 necessary for Contractor's operations only if:
- 7 (a) The disclosure is required by law; or
- 8 (b) Contractor obtains written assurances from any person or organization to
9 which Contractor will disclose such PHI and/or ePHI that the person or
10 organization will:
- 11 (i) Hold such PHI and/or ePHI in confidence and use or further disclose it
12 only for the purpose of which Contractor disclosed it to the third party, or
13 as required by law; and,
- 14 (ii) The third party will notify Contractor of any instances of which it
15 becomes aware in which the confidentiality of the information has been
16 breached.
- 17 (3) Aggregate the PHI and/or ePHI and/or aggregate the PHI and/or ePHI with that
18 of other data for the purpose of providing County with data analyses related to
19 the Underlying Agreement, or any other purpose, financial or otherwise, as
20 requested by County.
- 21 (4) Not disclose PHI and/or ePHI disclosed to Contractor by County not authorized
22 by the Underlying Agreement or this Addendum without patient authorization or
23 de-identification of the PHI and/or ePHI as authorized in writing by County.
- 24 (5) De-identify any and all PHI and/or ePHI of County received by Contractor
25 under this Addendum provided that the de-identification conforms to the
26 requirements of the Privacy Rule and/or Security Rule and does not preclude
27 timely payment and/or claims processing and receipt.
- 28 C. Contractor agrees that it will neither use nor disclose PHI and/or ePHI it receives
29 from County, nor from another business associate of County, except as permitted
30 or required by this Addendum, or as required by law, or as otherwise permitted by
31 law.
- 32 D. Notwithstanding the foregoing, in any instance where applicable state and/or
33 federal laws and/or regulations are stricter in their requirements than the
34 provisions of HIPAA and prohibit the disclosure of mental health, and/or substance
35 abuse records, the applicable state and/or federal laws and/or regulations shall
36 control the disclosure of records.

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1 3. Obligations of County.

2 A. County agrees that it will make its best efforts to promptly notify Contractor in
3 writing of any restrictions on the use and disclosure of PHI and/or ePHI agreed to
4 by County that may affect Contractor's ability to perform its obligations under the
5 Underlying Agreement, or this Addendum.

6 B. County agrees that it will make its best efforts to promptly notify Contractor in
7 writing of any changes in, or revocation of, permission by any individual to use or
8 disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's
9 ability to perform its obligations under the Underlying Agreement, or this
10 Addendum.

11 C. County agrees to make it's best efforts to promptly notify Contractor in writing of
12 any known limitation(s) in its notice of privacy practices to the extent that such
13 limitation may affect Contractor's use or disclosure of PHI and/or ePHI.

14 D. County shall not request Contractor to use or disclose PHI and/or ePHI in any
15 manner that would not be permissible under the Privacy Rule and/or Security
16 Rule.

17 E. County will obtain any authorizations necessary for the use or disclosure of PHI
18 and/or ePHI, so that Contractor can perform its obligations under this Addendum
19 and/or the Underlying Agreement.

20 4. Obligations of Contractor. In connection with its use of PHI and/or ePHI disclosed by
21 County to Contractor, Contractor agrees to:

22 A. Use or disclose PHI and/or ePHI only as permitted or required by this Addendum
23 or as required by law.

24 B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI
25 and/or ePHI other than as provided for by this Addendum.

26 C. To the extent practicable, mitigate any harmful effect that is known to Contractor of
27 a use or disclosure of PHI and/or ePHI by Contractor in violation of this
28 Addendum.

29 D. Report to County any use or disclosure of PHI and/or ePHI not provided for by this
30 Addendum of which Contractor becomes aware.

31 E. Require sub-contractors or agents to whom Contractor provides PHI and/or ePHI
32 to agree to the same restrictions and conditions that apply to Contractor pursuant
33 to this Addendum.

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Between the County of Riverside and
MODERN DIAGNOSTICS MEDICAL SERVICES, INC.

- 1 F. Use appropriate administrative, technical and physical safeguards to prevent
2 inappropriate use or disclosure of PHI and/or ePHI created or received for or from
3 the County.
- 4 G. Obtain and maintain knowledge of the applicable laws and regulations related to
5 HIPAA, as may be amended from time to time.
- 6 5. Access to PHI, Amendment and Disclosure Accounting. Contractor agrees to:
- 7 A. Provide access, at the request of County, within five (5) days, to PHI in a
8 Designated Record Set, to the County, or to an Individual as directed by the
9 County.
- 10 B. To make any amendment(s) to PHI in a Designated Record Set that the County
11 directs or agrees to at the request of County or an Individual within sixty (60) days
12 of the request of County.
- 13 C. To assist the County in meeting its disclosure accounting under HIPAA:
- 14 (1) Contractor agrees to document such disclosures of PHI and information related
15 to such disclosures as would be required for the County to respond to a
16 request by an Individual for an accounting of disclosures of PHI.
- 17 (2) Contractor agrees to provide to County or an Individual, within sixty (60) days,
18 information collected in accordance with this section to permit the County to
19 respond to a request by an Individual for an accounting of disclosures of PHI.
- 20 (3) Contractor shall have available for the County the information required by this
21 section for the six (6) years preceding the County's request for information
22 (except the Contractor need have no information for disclosures occurring
23 before April 14, 2003).
- 24 D. Make available to the County, or to the Secretary of Health and Human Services,
25 Contractor's internal practices, books and records relating to the use of and
26 disclosure of PHI for purposes of determining Contractor's compliance with the
27 Privacy Rule, subject to any applicable legal restrictions.
- 28 E. Within thirty (30) days of receiving a written request from County, make available
29 any and all information necessary for County to make an accounting of disclosures
30 of County PHI by Contractor.
- 31 F. Within thirty (30) days of receiving a written request from County, incorporate any
32 amendments or corrections to the PHI in accordance with the Privacy Rule in the
33 event that the PHI in Contractor's possession constitutes a Designated Record
34 Set.
- 35 G. Not make any disclosure of PHI that County would be prohibited from making.

HIPAA BUSINESS ASSOCIATE AGREEMENT

Between the County of Riverside and
MODERN DIAGNOSTICS MEDICAL SERVICES, INC.

1 6. Access to ePHI, Amendment and Disclosure Accounting. In the event contractor
2 needs to create or have access to County ePHI, Contractor agrees to:

3 A. Implement and maintain reasonable and appropriate administrative, physical, and
4 technical safeguards to protect the confidentiality of, the integrity of, the availability
5 of, and authorized persons' accessibility to, County ePHI as applicable under the
6 terms and conditions of the Underlying Agreement. The ePHI shall include that
7 which the Contractor may create, receive, maintain, or transmit on behalf of the
8 County.

9 B. Ensure that any agent, including a subcontractor, to whom Contractor provides
10 ePHI agrees to implement reasonable and appropriate safeguards.

11 C. Report to County any security incident of which Contractor becomes aware that
12 concerns County ePHI.

13 7. Term and Termination.

14 A. Term – this Addendum shall commence upon the Effective Date and terminate
15 upon the termination of the Underlying Agreement, except as terminated by
16 County as provided herein.

17 B. Termination for Breach – County may terminate this Addendum, effective
18 immediately, without cause, if County, in its sole discretion, determines that
19 Contractor has breached a material provision of this Addendum. Alternatively,
20 County may choose to provide Contractor with notice of the existence of an
21 alleged material breach and afford Contractor with an opportunity to cure the
22 alleged material breach. In the event Contractor fails to cure the breach to the
23 satisfaction of County in a timely manner, County reserves the right to immediately
24 terminate this Addendum.

25 C. Effect of Termination – upon termination of this Addendum, for any reason,
26 Contractor shall return or destroy all PHI and/or ePHI received from the County, or
27 created or received by Contractor on behalf of County, and, in the event of
28 destruction, Contractor shall certify such destruction, in writing, to County. This
29 provision shall apply to all PHI and/or ePHI which is in possession of
30 subcontractors or agents of Contractor. Contractor shall retain no copies of the
31 PHI and/or ePHI.

32 D. Destruction not Feasible – in the event that Contractor determines that returning or
33 destroying the PHI and/or ePHI is not feasible, Contractor shall provide written
34 notification to County of the conditions which make such return or destruction not
35 feasible. Upon determination by Contractor that return or destruction of PHI
36 and/or ePHI is not feasible, Contractor shall extend the protections of this
37 Addendum to such PHI and/or ePHI and limit further uses and disclosures of such

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1 PHI and/or ePHI to those purposes which make the return or destruction not
2 feasible, for so long as Contractor maintains such PHI and/or ePHI.

3 8. Hold Harmless/Indemnification

4 Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts
5 and Departments of the County, their respective directors, officers, Board of
6 Supervisors, elected and appointed officials, employees, agents and representatives
7 from any liability whatsoever, based or asserted upon any services of Contractor, its
8 officers, employees, subcontractors, agents or representatives arising out of or in any
9 way relating to this Addendum, including but not limited to property damage, bodily
10 injury, or death or any other element of any kind or nature whatsoever including fines,
11 penalties or any other costs and resulting from any reason whatsoever arising from
12 the performance of Contractor, its officers, agents, employees, subcontractors, agents
13 or representatives from this Addendum. Contractor shall defend, at its sole expense,
14 all costs and fees including but not limited to attorney fees, cost of investigation,
15 defense and settlements or awards all Agencies, Districts, Special Districts and
16 Departments of the County, their respective directors, officers, Board of Supervisors,
17 elected and appointed officials, employees, agents and representatives in any claim
18 or action based upon such alleged acts or omissions.

19 With respect to any action or claim subject to indemnification herein by Contractor,
20 Contractor shall, at their sole cost, have the right to use counsel of their choice,
21 subject to the approval of County, which shall not be unreasonably withheld, and shall
22 have the right to adjust, settle, or compromise any such action or claim without the
23 prior consent of County; provided, however, that any such adjustment, settlement or
24 compromise in no manner whatsoever limits or circumscribes Contractor's
25 indemnification to County as set forth herein. Contractor's obligation to defend,
26 indemnify and hold harmless County shall be subject to County having given
27 Contractor written notice within a reasonable period of time of the claim or of the
28 commencement of the related action, as the case may be, and information and
29 reasonable assistance, at Contractor's expense, for the defense or settlement thereof.
30 Contractor's obligation hereunder shall be satisfied when Contractor has provided to
31 County the appropriate form of dismissal relieving County from any liability for the
32 action or claim involved.

33 The specified insurance limits required in the Underlying Agreement of this Addendum
34 shall in no way limit or circumscribe Contractor's obligations to indemnify and hold
35 harmless the County herein from third party claims arising from the issues of this
36 Addendum.

37 In the event there is conflict between this clause and California Civil Code Section
38 2782, this clause shall be interpreted to comply with Civil Code 2782. Such
39 interpretation shall not relieve the Contractor from indemnifying the County to the
40 fullest extent allowed by law.

HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
MODERN DIAGNOSTICS MEDICAL SERVICES, INC.

1 In the event there is a conflict between this indemnification clause and an
2 indemnification clause contained in the Underlying Agreement of this Addendum, this
3 indemnification shall only apply to the subject issues included within this Addendum.

4 9. General Provisions.

5 A. Amendment – the parties agree to take such action as is necessary to amend this
6 Addendum from time to time as is necessary for County to comply with the Privacy
7 Rule, Security Rule, and HIPAA generally.

8 B. Survival – the respective rights and obligations of this Addendum shall survive the
9 termination or expiration of this Addendum.

10 C. Regulatory References – a reference in this Addendum to a section in the Privacy
11 Rule and/or Security Rule means the section(s) as in effect or as amended.

12 D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall
13 be resolved to permit County to comply with the Privacy Rule, Security Rule, and
14 HIPAA generally.

15 E. Interpretation of Addendum – this Addendum shall be construed to be a part of the
16 Underlying Agreement as one document. The purpose is to supplement the
17 Underlying Agreement to include the requirements of HIPAA.