

FORM APPROVED COUNTY COUNSEL
 BY: NEAL R. KPMS DATE: 1/17/13

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

301



FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
 January 15, 2013

SUBJECT: Approval of Carl Zeiss Meditec, Inc. as Sole Source vendor for one Lumera 700 Eye Microscope for Riverside County Regional Medical Center (RCRMC).

RECOMMENDED MOTION: Move that the Board of Supervisors:

- 1) Authorize the Chairman of the Board to approve the Carl Zeiss Meditec as Sole Source for one Lumera 700 Eye Microscope.
- 2) Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to sign annual service agreements.
- 3) Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to sign amendments that do not change the substantive terms of the agreement for up to ten percent the maximum contract amount.

(cont. on page 2)

REVIEWED BY CIP

Christopher Hans
 Christopher Hans

Douglas D. Bagley
 Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 173,113.62	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost FY:	\$ 0	For Fiscal Year:	12/13

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

C.E.O. RECOMMENDATION: APPROVE

BY: Debra Cournoyer
 Debra Cournoyer

County Executive Office Signature

- Policy
- Policy
- Consent
- Consent

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: January 29, 2013
xc: RCRMC, Purchasing, CIP

Kecia Harper-Ihem
 Clerk of the Board
 By: [Signature]
 Deputy

Dept's Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.: District: 5 **Agenda Number:** 3-33

SUBJECT: Approval of Carl Zeiss Meditec, Inc. as Sole Source vendor for one Lumera 700 Eye Microscope for Riverside County Regional Medical Center (RCRMC).

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BACKGROUND:

The current Carl Zeiss Model 200 eye microscope is 12 years old and requires approximately \$9,000.00 to repair for continued use. The current microscope is out of date and does not support current ophthalmology best clinical practice.

The new Carl Zeiss Model 700 microscope provides a built in biom inverter lens which no other vendor can provide. The updated optics and lighting system provides clarity when viewing the eye reducing the risk of patient complication. This microscope allows full stereopsis for both surgeon and the assistant, meaning that they both can view the surgical site independently. This independent function improves education and clinical outcomes, due to the ability to adjust or focus the viewing field.

The Carl Zeiss model 700 eye microscope will shorten the length of surgery, provides for more accurate placement of implants, as well as ensuring a higher eye repair success rate with the addition of reduced patient complication.

PRICE REASONABLENESS:

GPO Novation solicited bids from Carl Zeiss Meditec and Medevex. One response was received from Carl Zeiss Meditec. The response was evaluated by the Perioperative Counsel and awarded to Carl Zeiss. Based on GPO Novation contract number CE0150, Carl Zeiss Meditec was determined to be the single-source of the equipment and accessories. Zeiss price is \$206,769.16 less demo discount of \$7,020.59 and order discount of \$46,806.86. Total price of equipment less discounts, including shipping and tax is \$173,113.62. Carl Zeiss will provide annual maintenance after the one (1) year warranty at \$5,790.00 per year for a period of four (4) years

FINANCIAL IMPACT:

Hospital Enterprise Funds

REVIEW/APPROVAL:

County Counsel and County Purchasing

Date: December 21, 2012
From: Douglas D. Bagley, Hospital Director
Riverside County Regional Medical Center
To: Board of Supervisors
Via: Purchasing Agent
Subject: Sole Source Procurement; Lumera 700 Eye Microscope

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** Lumera 700 Eye Microscope
2. **Supplier being requested:** Carl Zeiss Meditec, Inc.
3. **Alternative suppliers that can or might be able to provide supply/service:**
There are other suppliers that can provide a new eye microscope however Zeiss is the only company that provides the biom inverter lens built in the inside of the microscope.
4. **Extent of market search conducted:** Government Purchasing Organizations (GPO), Internet and trade journals.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** The Lumera 700 provides built in biom inverter lens which no other vendor can provide. The updated optics and lighting system provides clarity when viewing the eye reducing the risk of patient complication. This design provides ease of use and less chance of a distorted picture during the surgical procedure. This microscope allows full stereopsis for both surgeon and the assistant, meaning that they both can view the surgical site independently.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** Retinol surgery will be completed efficiently.
7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** GPO Novation solicited bids from Carl Zeiss Meditec and Medevex. Response was received from Carl Zeiss Meditec. The response was evaluated by the Perioperative Counsel and awarded to Carl Zeiss. Based on GPO Novation contract number CE0150, Zeiss was determined to be the single-source of the equipment and accessories. Zeiss price is 206,769.16 less demo discount of \$7,020.59 and order discount of \$46,806.86. Total price of equipment less discounts, including shipping and tax is \$173,113.62.
8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).** Annual maintenance agreement after the (1) Year warranty at \$5,790.00 per year for a period of 4 years
9. **Period of Performance:** One time purchase plus the (4) year annual maintenance agreement.

R. Bagley
Department Head Signature

12/26/12
Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ 173,113.62

One time

Annual Amount through December 2017 \$5,790.00

M. Smith
Purchasing Agent

1-2-13
Date

13-280
Approval Number
(Reference on Purchasing Documents)



Carl Zeiss Meditec, Inc
 5160 Hacienda Drive
 Dublin, CA 94568-7562

Tax ID # 94-3374401
 DUNS 362747011
 Toll Free 800-442-4020
 Telephone 925-557-4100
 Fax 925-557-4393
 www.meditec.zeiss.com

For Assistance Contact:
 Sales Representative name: Brian Harralson
 Phone number: 714-972-9499
 Email:

Quotation No: 7740053488
 Quotation Date: 1/8/2013
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Billing Site:
 1000348719
 Riverside County Regional Medical C

 26520 Cactus Ave.
 MORENO VALLEY CA 92555-3927
 951-486-4000

Instrument Site:
 1000348719
 Riverside County Regional Medical C
 Richard Strickland
 26520 Cactus Ave.
 MORENO VALLEY CA 92555-3927
 951-486-4000

Price quotation / purchase agreement

					UN:USA - Novation	
Pos	Product ID	Description	Qty	Price (\$)	Ext. Price (\$)	
10	000000-1776-227	consisting of OPMI® Lumera 700 with magnetic clutches, XY-coupling,integrated beam splitter, with deselectable integrated assistant scope with motorized Zoom selectable linked or independent assistant zoom or alternatively manual magnification changer, Superlux Eye Xenon light source with integrated HaMode filter or halogen or LED light source, SCI-Stereo coaxial illumination, motorized zoom range 1:6 , motorized focus and fast focus functionality, depth of focus management system DeepView, binocular tubes, widefield eyepieces, apochromatic objective lens and asepsis with 5.7" GUI touchscreen, wireless or wired 14 function foot control panel.	1.00	174,878.92	174,878.92	
20	305953-9900-000	OPMI Lumera 700 Microscope on Floorstand without illumination unit	1.00			
30	302681-9100-000	Assistant Microscope With Electrical Zoom For OPMI Lumera 700	1.00			
40	302681-9023-000	Sci Illumination For Main And Assistant Scope, W/O Slit	1.00			
50	304977-9023-000	Superlux 180 Eye Future	1.00			
60	304970-9020-000	Foot Control Panel Wireless Fcp WI	1.00			
70	304970-8760-000	Can Bus Cable For Footswitch, 6M Long	1.00			
80	303797-9140-000	Tiltable Tube 110Å° Motorized Inverter E	1.00			



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Pos	Product ID	Description	Qty	Price (\$)	Ext. Price (\$)
90	305810-9001-000	22 mm asepsis caps, pack of 6	1.00		
100	303032-9002-000	Adapter Dovetail 11Mm Assembled	1.00		
110	305542-0000-000	Widefield, Push-In Eyepiece 10X	2.00		
120	302652-9905-000	Objective F=200 Apo	1.00		
130	303797-9140-000	Tilttable Tube 110Å° Motorized Inverter E	1.00		
140	305810-9001-000	22 mm asepsis caps, pack of 6	1.00		
150	305542-0000-000	Widefield, Push-In Eyepiece 10X	2.00		
160	305810-9001-000	22 mm asepsis caps, pack of 6	2.00		
170	305810-9017-000	6 Pack Asepsis Caps Lumera 700	1.00		
173	305810-9003-000	6 pack asepsis caps, for PD adjustment, 180° tilttable tube	1.00		
176	306070-0000-000	Zeiss Sterile Drapes, Type 70, Pack Of 5	1.00		
180	000000-1055-278	Dust Cover for OPMI Blue	1.00		
190	302681-9780-000	Integrated 3CCD Camera NTSC	1.00		
200	302681-9760-000	Integrated Medialink	1.00		
210	309438-9002-000	Trnsprt Case OPMI Lumera 700 Floor Stand	1.00		
220	305953-9036-000	17" monitor/bracket, L700	1.00	4,642.07	4,642.07
230	000000-1783-972	RESIGHT non-contact fundus viewing system. Includes the following components: RESIGHT focusing unit, 3 aspheric lenses 128D, 3 aspheric lenses 60D, 3 sterilizable lens holders for objective lens f200 or f175, 3 RESIGHT trays, dovetail mount set and package of 6, 22mm asepsis caps	1.00	27,248.17	27,248.17
240	302721-9030-000	Basic And Focusing Unit, Electrical	1.00		
250	305810-9001-000	22 mm asepsis caps, pack of 6	1.00		
260	302721-9100-000	Ophthalmoscopy Lens 60D	3.00		
270	302721-9080-000	Ophthalmoscopy Lens 128D	3.00		



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Quotation date: 1/8/2013
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Terms and Conditions of Sale

These Terms, combined with the information on the front or attached pages ("Front") constitute an agreement with Carl Zeiss Meditec, Inc. ("Zeiss") in which the purchaser name on the Front ("Buyer", "You", "Your") will purchase the product(s) described on the Front ("Product(s)"). Terms on the Front will supersede these terms below.

1. PRICES AND TAXES – All prices in this Agreement ("Price(s)") are in U.S. dollars. Quotations are only valid for thirty (30) days from the date of quote. The Price does not include applicable sales, excise, use, or other taxes in effect or later levied. Zeiss is licensed and required by law to collect sales tax in all states. Except for those taxes attaching to Zeiss (e.g. income taxes), Buyer is responsible for payment of all taxes associated with its purchase of the Product(s), including (but not limited to) sales or excise taxes, duties, or property taxes.

2. TRADE-IN POLICY – If Buyer's "trade-in" equipment ("Trade-In(s)") is part of the Price, Buyer warrants that Buyer owns the Trade-In(s) free of any liens, security interests or other encumbrances. Buyer must complete the de-installation of the Trade-In(s). Trade-In(s) must be in the condition as noted on the Quotation, and must include all hardware, software, components, and applicable license(s), and are the model and serial number listed on the Quotation ("Complete"). Trade-In(s) are subject to Zeiss' inspection and acceptance. If Trade-In(s) are not delivered to Zeiss within 60 days of delivery of the Product(s), are not Complete or otherwise unacceptable to Zeiss, Zeiss may recalculate the Price and Buyer agrees to pay Zeiss the adjusted Price. Buyer will bear the risk of loss for Trade-In(s) until they are delivered to Zeiss or its carrier. If accepted, Zeiss may immediately dispose of the Trade-In and Buyer will have no right to a return of the Trade-In. If this Agreement is terminated, or the Product(s) are returned, then Buyer agrees that Buyer will only receive a credit for the Trade-In(s) value toward Buyer's next purchase of Zeiss product(s).

3. TERMS AND METHOD OF PAYMENT - Unless stated otherwise on the Front, payment in full will be due thirty (30) days from the date of invoice. Zeiss may require a deposit upon placement of the order, and may further require the balance to be Due On Delivery (including applicable sales tax, freight, insurance, etc.). Zeiss reserves the right to require payment in full, in advance or C.O.D., or otherwise modify credit terms either before or after acceptance of any order if for any reason Buyer's credit is or becomes objectionable to Zeiss. Pending correction of any objectionable credit situation, Zeiss may withhold shipments without incurring any liability to Buyer. All balances not paid when due shall be subject to a service charge equal to one-and-one-half percent (1 ½%) per month, or the highest rate permitted by law, whichever is less. For Zeiss to extend tax exempt status to Buyer, Buyer must provide a tax-exemption certificate based upon the jurisdiction of the installation location prior to acceptance of the order. In the event of a transaction in which the Buyer delays installation of Product(s) for more than sixty (60) days, Buyer will accept Zeiss's invoice for the Product(s) and tender payment timely regardless of installation.

4. CREDIT STATEMENT - Buyer certifies that the information submitted pertaining to its credit worthiness is accurate. Buyer, its owners and/or principals, and all individuals whose names appear on the Agreement expressly authorize consumer reporting agencies and other persons to furnish credit information to Zeiss, separately or jointly with other creditors, for use in connection with this Agreement. Zeiss and joint users of such information are authorized to receive and exchange credit information and to update such information as appropriate for the express purpose of assessing Buyer's credit worthiness.

5. SHIPMENT, RISK OF LOSS, SHIPPING DATE - All shipments will be made FCA. Zeiss's shipping points. Absent specific agreement, Zeiss will select the carrier. Title and Risk of Loss to the Product(s) passes to the Buyer upon Zeiss' delivery to the designated carrier or delivery service. Buyer shall reimburse Zeiss for any insurance proceeds obtained covering losses associated with delivering the Product(s) to the carrier. If a shipment date is indicated on this Agreement, such date is only an estimated delivery date, and not a material term of this Agreement. Zeiss will make all reasonable efforts to meet the delivery date. If (i) Zeiss does not deliver the Product(s) within sixty (60) days of the delivery date, then Buyer may terminate this Agreement or (ii) if Buyer does not take delivery from Zeiss within ninety (90) days of the delivery date, then Zeiss may terminate this Agreement; and in neither circumstance will Buyer or Zeiss have any further obligations to the other.

6. ACCEPTANCE – Buyer will be deemed to have accepted the Product(s) on the earlier of (i) delivery of the Product(s) to the Buyer (if installation is not priced separately on the Front) or (ii) confirmation by Zeiss that the Product(s) have been installed and conform to Zeiss' specifications and requirements for operation or (iii) Buyer's use of the Product(s).

7. SECURITY INTEREST - Until the Product(s) are paid for in full, Buyer gives Zeiss a security interest in the Product(s), all monies received for the Product(s), or in any chattel paper regarding the Product(s) (e.g.: lease agreements).

8. LIMITED WARRANTY - This is a limited warranty that gives Buyer specific legal rights. Non-institutional Buyers may have other rights, which vary from state to state. Warranty is void outside the U.S.A.

Duration of Warranty: This Limited Warranty will last, unless otherwise stated on the Front, for one (1) year from shipment date ("Warranty Period"). **What Is Covered:** All parts defective in material and workmanship. **What Zeiss Will Do:** Zeiss will, at its sole option, repair or replace any parts it reasonably determines to have failed due to defects in material or workmanship during the Warranty Period, free of any charge for either parts or labor. **What is Not Covered:** Consumable items nor the servicing/replacement of other manufacturer's equipment or accessories. These items, as well as any third-party supplied items (software or hardware) will be covered by their manufacturer's warranty and any arrangements for service or replacement of such items must be made through that manufacturer. This Limited Warranty does not cover failure that has resulted from improper or unreasonable use or maintenance, accident, unauthorized transportation from the initial installation location or environmental conditions outside of those prescribed in the Product specifications, improper packaging or shipment, electrical failure, or unauthorized tampering, alteration or modification. Consumables and items with a limited expected useful life are not subject to this Limited Warranty. On-site planned or preventive maintenance activities are not included as a part of this Limited Warranty. **Exclusive Warranty:** The provisions of this Limited Warranty are in lieu of any other warranty, whether expressed or implied, written or oral, including any warranty of fitness for a particular purpose. **Exclusive Remedy:** Zeiss' obligation to repair, replace, or at its sole option refund the value of such defective parts, are the only remedies available under this Limited Warranty. Some jurisdictions do not allow limitations on exclusion of or limitation of remedies so the foregoing limitations and exclusions may not apply.

9. SERVICE AGREEMENT – If this Agreement includes the purchase of a Service Agreement, then the Zeiss Service Agreement Terms and Conditions will apply to those services.



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- 10. TRAINING** – Zeiss may provide training related to certain Product(s), the form, duration and content of which will be at Zeiss' discretion. Training commitments expire 6 months after the Product(s) are shipped.
- 11. LICENSE FOR USE OF SOFTWARE** - Zeiss grants Buyer a non-exclusive, non-transferable license to use the software incorporated in the Product(s) ("Software"), solely for Buyer's internal practice uses. This license does not include the right to make copies of Software, extract, modify or incorporate any part of the Software, nor reverse engineer, decompile, or disassemble the Software. Zeiss does not claim that the Software is free from defects and shall have no obligation to supply software upgrades (i.e., new versions, or new, or in-line releases). This limitation will not apply to required corrective actions.
- 12. RETURN POLICY** – Unless it has given its written consent, Zeiss will not accept any Product returns. If Zeiss consents to the return, Buyer may be charged a twenty percent (20%) restocking fee for all Zeiss authorized Product(s) returns. Risk of Loss, and Shipping and Handling fees for returned Product(s) are the Buyer's responsibility. Unless Zeiss agrees otherwise, returned Product(s) must be in new condition and packaged in the original packaging. Consumable Product(s), such as bulbs, lamps, fuses, fiber optic cables, etc., are not returnable.
- 13. CANCELLATION POLICY** – This Agreement can only be cancelled prior to shipment by written agreement of Buyer and Zeiss. If Buyer cancels this Agreement, Buyer may be charged a 20% cancellation fee. If Buyer only cancels part of Buyer's order under this Agreement, Zeiss may adjust the Price of the remaining Product(s) being purchased, which may mean discounts offered on the original order will not be available.
- 14. FORCE MAJEURE** – Zeiss will make every reasonable effort to complete shipment, but shall not be liable for any loss or damage for delay in delivery, or any other failure to perform due to causes beyond its reasonable control including but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, labor or material shortages, embargo, failure or delays in transportation, unavailability of components or parts for machinery used for manufacture of its Product(s), acts of God, acts of the Federal Government or any agency thereof, acts of any state or local government or any agency thereof, and judicial action. Should such a delay occur, Zeiss may reasonably extend delivery or production schedules or, at its option, cancel the order in whole or part without any liability other than to return any unearned deposit or prepayment.
- 15. ASSIGNMENT** – Buyer shall not assign or transfer any rights, duties or obligations under this Agreement without Zeiss' prior written consent.
- 16. GOVERNING LAW; DISPUTE RESOLUTION** – The substantive laws of the State of New York will govern the construction of this Agreement. Both parties agree to waive any right to a trial by jury.
- 17. LIMITATION OF LIABILITY** – Notwithstanding anything contained in this or any other agreement between Zeiss and Buyer, neither party will be liable to the other for any loss, damage, cost of repairs, incidental, punitive, exemplary, indirect or consequential damages of any kind, including (without limitation) loss of profit, revenues or business opportunity, (all of which each party expressly waive to the fullest extent permitted by law) even if either party has been advised of the possibility of such damages, whether or not based upon express warranty or implied warranty (except for the obligations assumed by Zeiss under the Limited Warranty Clause), contract, tort, negligence, strict liability or other cause of action arising in connection with this Agreement or with the design, manufacture, sale, use or repair of the Product(s). This provision may not affect third party claims for bodily injury or death arising in Product(s) liability or from Zeiss' gross negligence. Some states do not allow the exclusion or limitation of consequential or incidental damages, so the above limitation or exclusion may not apply.
- 18. PATENT INDEMNITY** – Zeiss will defend or settle any claim, suit or proceeding brought against Buyer based on allegations that the Product(s) infringe on a third party patent, provided that: Zeiss is notified timely of such claim, suit or proceeding; Buyer renders all reasonable cooperation to Zeiss; Buyer gives Zeiss the sole authority to defend or settle the same. If the Product(s) are held to infringe on any patent and the use of the Product(s) is enjoined, Zeiss will have the option, at its discretion (i) to procure Buyer the right to use the Product(s) or (ii) to modify the Product(s) so that they no longer infringe or (iii) upon the return of the Product(s), refund Buyer the depreciated value of the Product(s) and accept the return thereof. This indemnification will not apply to changes made by Zeiss at Buyer's instruction or by Buyer, or by the use of third party items in conjunction with the Product(s) (unless sold or directed by Zeiss). In no event will Zeiss' total liability to Buyer with respect to any infringement or misappropriation exceed the depreciated value of the Product(s). Rev 110301
- 19. EXPORT / RE-EXPORT** - The Product(s) and Software may be subject to United States Export Administration Regulations, and diversion contrary to U.S. law is prohibited.
- 20. ENTIRE AGREEMENT** - This Agreement constitutes the final and complete agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the purchase or sale of the Product(s). The terms and conditions of this Agreement shall prevail over any variance with the terms and conditions of any order submitted by the Buyer for the Product(s), regardless of any provisions to the contrary. No claimed additions to or modifications or amendments of this Agreement, nor any claimed waiver of any of its terms or conditions, shall be effective unless in writing and signed by the party against whom the same may be asserted.



CARL ZEISS MEDITEC

SERVICE AGREEMENT ESTIMATE

12/20/2012
Contract Dates: 10/01/2013 through 10/01/2014

Estimate Number: USDQ-936QRL

Instrument Site

Riverside County Regional Medical
26520 Cactus Ave
Moreno Valley, CA 92555-3927

Contact Information

Richard Strickland
rstrickland@co.riverside.ca.us
Phone: 951-288-2994

Table with 8 columns: Line, Service Product ID, Service Product Description, Serial No., List Price, Qty, Disc, Total. Rows include LUMERA 700 ELITE SERVICE PLAN, LUMERA 700 ESSENTIAL SERVICE PLAN, and LUMERA 700 EXTENDED WARRANTY SERVICE PLAN. Total: \$15801.00

COVERAGE DETAILS

- 100 OPMI LUMERA 700 ELITE - On-site labor, travel and parts, unlimited phone support, 1 preventative maintenance, software updates and up to \$5,000 in software upgrades, next business day onsite response if non-operational, annual service report.
200 OPMI LUMERA 700 ESSENTIAL - On-site labor, travel and parts, unlimited phone support, 1 preventative maintenance, software updates and up to \$2,000 in software upgrades, 4 day onsite response, annual service report.
300 OPMI LUMERA 700 EXTENDED WARRANTY - On-site labor, travel and parts, unlimited phone support, best effort onsite response.

ACCEPTANCE

This agreement is subject to the terms on the following pages.

Signature of Authorized Customer _____ Print Name _____ Title _____ Date _____

Please provide one of the following methods of payment:

Credit Card No./Check No. or PO (attach) _____ Expiration Date _____

Billing Address _____ City State, Zip _____

Printed name on credit card and credit billing address, including zip code if different from above.
We accept MasterCard, American Express and VISA.
Contract coverage will commence upon date of acceptance.

Pricing is based on a one-year term. This special offer will expire 30 days from the date of this estimate.

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE 1/7/13



SERVICE AGREEMENT TERMS AND CONDITIONS

1. ZEISS DUTIES

Starting on the Effective Date as stated on page 1 of this document and during the term of the Agreement, Carl Zeiss Meditec, Inc. ("Zeiss") will provide the following services:

- 1.1 **Scheduled Preventive Maintenance.** Zeiss will provide preventive maintenance and calibration inspections for the equipment specified in the Equipment Details section of this document, ("Equipment") and those actions which Zeiss considers necessary to insure the Equipment performs properly. These services will be provided at the customer's facilities as specified on the Customer Details section of this document ("Customer's Facilities") during Zeiss's normal working hours, (8:00 AM to 5:00 PM local time Monday through Friday, except Zeiss recognized holidays) ("Normal Hours"). Preventive maintenance inspections may be performed while other services are being provided under this Agreement.
- 1.2 **Remedial Maintenance During Normal Hours.** Zeiss will provide remedial maintenance necessary to maintain the equipment in good working order upon the customer's request. Unless specified otherwise on page 1 of this document, remedial maintenance will be performed at the Customer's Facilities during Normal Hours.
- 1.3 **Remedial Maintenance Outside of Normal Hours.** Remedial maintenance will be provided outside Normal Hours at customer's request only, at an additional charge for overtime labor, travel and expenses. There will be a minimum labor charge of two hours for all maintenance performed outside Normal Hours.
- 1.4 **Maintenance Parts.** When specified in the Customer Details section, Zeiss will provide all necessary replacement parts to maintain the Equipment, with the exception of Glassware and Consumables. Glassware is defined as objective lenses, eyepieces, etc. and Consumables as bulbs, lamps, filters, etc. Replacement parts will be new parts or rebuilt parts, which in Zeiss' judgment, are of equal performance and quality to new parts. Zeiss will take possession of all replaced parts, unless otherwise agreed.

2. EXCLUSION FROM MAINTENANCE DUTIES

Zeiss' obligations under this agreement do not apply:

- (a) If the need for services or parts arises from (i) any intentional acts or negligence of Customer's employees, agents or invitees, (ii) anyone other than Zeiss authorized personnel attempting to repair or service the Equipment (iii) use of special attached or devices not provided by Zeiss or (iv) misuse of the Equipment, including, without limitation, use of the Equipment for any application or function for which it was not designed.
- (b) To accessories, attachments, supplies, machines or other devices not furnished by Zeiss or electrical work external to the Equipment.
- (c) To maintenance required to repair damage resulting from Customer's transportation of the Equipment, or any Excusing Event (as defined in Paragraph 4 of these Terms and Conditions).

3. RESPONSIBILITIES OF CUSTOMER

Customer must provide Zeiss reasonable access to the Equipment to perform the services required under this agreement. Zeiss will work with the customer to schedule maintenance and prevent delays. However, Customer may be billed at prevailing labor rates for lost time and travel if Zeiss is not permitted reasonable access to the Equipment.

Customer must pay the total amount due for this Agreement including all applicable Federal, State and Local taxes, within 30 days of invoice. Payment for services outside Normal Hours or for work performed outside the scope of this Agreement, such as those instances described in paragraph 2, must be paid within 30 days of invoice.

Customer must provide a knowledgeable representative with signature authority to accept the satisfactory completion of work performed and to authorize billing when services are provided outside Normal Hours.

4. EXCUSED PERFORMANCE

Zeiss shall not be liable for any failure to perform or delayed performance of any part of this agreement if such performance is prevented, hindered, or delayed by reason of any cause beyond the reasonable control of Zeiss ("Excusing Event") including, without limitation, labor disputes, strikes, other industrial disturbance, acts of God, floods, shortages of materials, earthquakes, casualty, war, acts of the public enemy, riots, insurrections, public health risk, quarantine, embargoes, laws, blockages, actions, restrictions and regulations or orders of any government, government agency or subdivision.

5. ADDITIONAL EQUIPMENT

This agreement only applies to the Equipment defined in the Equipment Details section and not to any new Zeiss products purchased during the term hereof. New pieces of Zeiss equipment can be added to this Quotation/ Agreement upon mutual agreement. The Annual Service Rate for each new piece of equipment which may be added to this agreement will be the standard service rate in effect on the date the new equipment is to be added under this agreement. The Total Annual Service Charge will be adjusted to reflect the Annual Service Rate charge for the new equipment.

6. WARRANTY: DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY

6.1 **Warranty: Disclaimer of warranty.** Zeiss warrants that: (a) the services described in Section 1 of these Terms and Conditions will be free from defects in material and workmanship at the time of installation. ZEISS MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO SERVICE OR PARTS PROVIDED BY ZEISS PURSUANT TO THIS SERVICE AGREEMENT.

6.2 **Remedy: Limitation of Liability.** If Zeiss breaches any warranty or obligation under this Agreement; its sole obligation will be to make all necessary adjustments, repairs and replacements in accordance with the terms of this Agreement and to replace any defective parts installed under this Agreement. Zeiss shall have no liability for damages under this agreement in connection with any non-functioning or malfunctioning unit of Equipment unless such Equipment fails to function properly for a period of three consecutive months. If the Equipment fails to function properly for such three months period, Zeiss' total liability under this Service Agreement shall be limited to general money damages in an amount not to exceed the prorated Annual Service Rate paid by Customer attributable to such non-function or malfunctioning Equipment for the period which the Equipment fails to function

properly. ZEISS WILL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER INCLUDING WITHOUT LIMITATION, LOSS OF USE OF THE EQUIPMENT OR LOSS OF PROFITS.

7. EQUIPMENT LOCATION

The Equipment is located at Customer's Facilities as described in the Customer Details section of this document. Any subsequent resale or removal to a new location without Zeiss' prior approval may result in immediate cancellation of this Agreement.

8. TERMINATION

The term of this Agreement is stated in the Customer Detail section. This Agreement may also be terminated:

- (a) At any time upon mutual consent after the initial one year period, by giving 90 days prior written notice of termination.
- (b) By either party in the event of default by the other party which remains uncorrected for 90 days after notice of such default is given to the defaulting party;
- (c) By either party upon giving 90 days prior written notice to the other party. If the customer cancels, the amount refunded will be determined by prorating the total value of the Agreement, to determine the value remaining on the Agreement, and by deducting our standard charges for service work performed under the Agreement. A penalty of 25% of the remaining contract balance will be billed upon termination.

9. MISCELLANEOUS

9.1 Assignment. Customer may not assign its rights and obligations under this Agreement in full or in part by operation of law or otherwise, without Zeiss' prior consent. Zeiss will not assign its rights or obligations under this Agreement without prior notice to Customer.

9.2 Waiver. If either party fails to exercise a right or insist on strict performance under this Agreement on one occasion, that party will not be precluded from exercising that right, or insisting on performance of that obligation on any other occasion; nor will this Agreement be modified in any way by such failure to exercise a right or insist on strict performance under this Agreement.

9.3 Written Agreement. This Agreement supersedes any prior agreements, written or oral, between the parties, contains the entire understanding between the parties and except as provided herein, may be amended or altered only by a mutually signed writing.

9.4 Governing Law. This Agreement will be interpreted under the substantive laws of the ~~State of New York~~. The venue and procedural laws applying to any conflict arising from this Agreement will be determined by a court of competent jurisdiction.

State of California Larry Dawson

9.5 Inspection. Any Equipment under a service agreement which has expired may require a site inspection by Zeiss to determine the operating status of the equipment in question. The charges associated with this inspection will be billed at the applicable time and materials rate

9.6 Unenforceable Provisions. If any part of this Agreement or its application becomes illegal, unenforceable, or void, such provision will be changed and interpreted so as to best accomplish the objectives of that provision to the extent allowed by law, and the remaining provisions of this Agreement will continue in full force and effect.

9.7 Counterparts and Facsimile Signature. This Agreement may be signed in any number of counterparts, but will be considered duly executed when signed by both parties. The parties agree that this Agreement may be duly executed by faxed signatures, provided original documents are provided within 30 days thereafter.

9.8 Controlling Terms. The terms and conditions of this Agreement will supersede any provisions, terms and conditions contained on any confirmation or purchase order, acceptance, acknowledgment or other writing buyer may give or receive. If buyer's purchase order is used to accept the offer tendered by Zeiss, the terms and conditions in this Agreement will control and the issuance of the purchase order by buyer will operate as acceptance by buyer of Zeiss' terms.