

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Health Services Agency *ms*

BOARD AGENDA # \*B-9

Urgent

Routine

AGENDA DATE March 18, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of Independent Contractor Agreements in Excess of \$100,000 Between the Stanislaus County Health Services Agency and Various Contractors for Fiscal Year 2007-2008

STAFF RECOMMENDATIONS:

1. Approve the Independent Contractor Agreements between the Stanislaus County Health Services Agency and various contractors for Fiscal Year 2007-2008.
2. Authorize the Health Services Agency Managing Director or her Designee to sign the agreements included in this agenda item.
3. Authorize the Health Services Agency Managing Director, her designee or successor, to negotiate and sign individual amendments to the agreements, not to exceed \$75,000.

FISCAL IMPACT:

The recommended agreements contained in this report total \$659,000. Within allocated revenues including existing General Fund dollars, the Health Services Agency's Fiscal Year 2007-2008 Budget includes sufficient appropriations to cover the requested agreements.

BOARD ACTION AS FOLLOWS:

No. 2008-175

On motion of Supervisor Monteith, Seconded by Supervisor DeMartini  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini, and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST: Christine Ferraro  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Independent Contractor Agreements in Excess of \$100,000 Between the Stanislaus County Health Services Agency and Various Contractors for Fiscal Year 2007-2008

Page 2

**DISCUSSION:**

The list of Independent Contractors included in the table below, are healthcare providers who provide medical care within the County's Health Services Agency clinics and/or on an inpatient basis to qualified Medically Indigent Adult patients. While the actual amounts to be paid to these providers is dependent on the volume of services provided throughout the year and based on a per service fee schedule, the amounts included in the table below are primarily based on projected utilization of services by Health Services Agency patients during the Fiscal Year 2007-2008.

With respect to the agreement with the McHenry Medical Group, it is important to note that a contractual relationship had already been approved by the Board of Supervisors for this fiscal year. Since that approval however, the McHenry Medical Group absorbed the operations of another medical group with whom the Health Services Agency contracts. This request includes both the previously requested amount and the increased amount expected to be paid to this contractor as a result of their operational change.

Department	Budget Unit	Contractor	Brief Description of service provided or Position held	Contract amount during Fiscal Years 2003/2004 – 2006/2007	Proposed Contract Amount for Fiscal Year 2007-2008	Cumulative Contract Total
Health Services Agency	Indigent Health Care Program and Clinic & Ancillary	Modesto Anesthesia Medical Group	Anesthesia services and Residency Teaching	\$573,665	\$209,000	\$782,665
Health Services Agency	Clinic & Ancillary	McHenry Medical Group	Urology, Gastroenterology, and On Call Services for Residency Teaching	\$1,013,720	\$450,000	\$1,463,720

**POLICY ISSUES:**

Execution of these Agreements continues to support the Board's priority of a healthy community by maintaining access to healthcare for the underserved population of our county.

**STAFFING IMPACT:**

There is no staffing impact associated with this request.

**AGREEMENT  
FOR  
PROFESSIONAL SERVICES**

This Agreement For Professional Services is made and entered into by and between the County of Stanislaus ("County") and Modesto Anesthesia Medical Group, Inc. ("Consultant"), as of July 1, 2007 (the "Agreement").

**Introduction**

WHEREAS, the County has a need to provide anesthesia training for its family practice residents and desires to document reimbursement rates for the County's eligible MIA and IHCP patients; and

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**Terms and Conditions**

1. **Scope of Work**

1.1 The Consultant shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. The County shall defend, indemnify and hold harmless the Consultant and its officers, employees, agents, representatives, subcontractors and consultants from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, arising out of or resulting from the County's reuse of the documents and drawings prepared by the Consultant under this Agreement.

1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in

Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Consultant; provided, however, that such schedule is subject to review by and concurrence of the County.

1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either express or implied, as part of this Agreement.

1.5 If the Consultant deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment. Any consultant, expert or investigator employed by the Consultant will be the agent of the Consultant not the County.

## 2. Consideration

2.1 The Consultant shall be compensated on either a time and materials basis or a lump sum basis, as provided in Exhibit A attached hereto.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 The Consultant shall provide the County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

2.4 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and

conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

### 3. Term

3.1 The term of this Agreement shall be from the date of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 The County may terminate this agreement upon 30 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Consultant as provided in Paragraph 2 herein, subject to any applicable setoffs.

3.4 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.

### 4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to the County.

### 5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. The Consultant--not the County--has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

### 6. Insurance

6.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.

6.1.3 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Consultant will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.

6.3 The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.

6.4 The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees.

6.6 The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A:-VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.

6.9 Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates

of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

## 7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Consultant or Consultant's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Consultant's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.

7.2 Consultant's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

7.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Consultant and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

7.4 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:

(a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;



(b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and

(c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant.

## 8. Status of Consultant

8.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Consultant. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

8.4 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

8.5 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Consultant.

8.6 It is understood and agreed that as an independent contractor and not an employee of County, the Consultant and the Consultant's officers, employees, agents,

representatives or subcontractors do not have any entitlement as a County employee, and, except as expressly provided for in any Scope of Services made a part hereof, do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.7 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

8.8 As an independent contractor, Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 9. Records and Audit

9.1 Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

## 10. Confidentiality

The Consultant agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

## 11. Nondiscrimination

During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and

regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Consultant. County has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus  
Health Services Agency  
Attention: Managing Director  
P.O. Box 3271  
Modesto, CA 95353

To Consultant: Modesto Anesthesiology Medical Group, Inc.  
c/o Doctors Medical Center Hospital  
1441 Florida Avenue  
Modesto, CA 95350

15. Conflicts

Consultant agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first hereinabove written.

**COUNTY OF STANISLAUS**  
GSA Purchasing Division

**MODESTO ANESTHESIOLOGY  
MEDICAL GROUP, INC.**

By: BOARD ORDER B-9, 3/18/08  
Julie A. Mefferd, Director/Purchasing  
Agent

By: William Papadimitriou M.D.  
Printed name: William Papadimitriou, M.D.  
Title: Chairperson, Modesto Anesthesia

APPROVED AS TO CONTENT:  
Health Services Agency

By: Mary Ann Lee  
Mary Ann Lee, Managing Director

APPROVED AS TO FORM:

By: Dean Wright  
Dean Wright, Deputy County Counsel

## EXHIBIT A

### A. SCOPE OF WORK

The Consultant shall provide services to the County's Health Services Agency ("HSA") under this Agreement as set follows:

#### 1. Teaching Services

- a. Consultant shall provide HSA's family practice residents with anesthesia instruction to include:
  - i. Chin lift, bag mask and oral intubation; review of airway anatomy and discussion of cricoid pressure and cricothyrotomy;
  - ii. Discussion of airway and respiratory monitoring including pulse oximetry and tidal CO<sub>2</sub> and factors affecting their use;
  - iii. Discussion and demonstration of conscious sedation and the drugs involved;
  - iv. Discussion of muscle relaxants (sccenyl choline and non-depolarizing muscle relaxant); and
  - v. Evaluation of the airway.
- b. Consultant shall, at its option, work with the HSA Residency Program Director to provide up to four (4) noon conference instruction sessions.

#### 2. MIA/IHCP Anesthesia Services

- a. Consultant shall provide anesthesia services to all patients enrolled in HSA's Medically Indigent Adult ("MIA") program and/or Indigent Health Care Program ("IHCP") treated at Doctor's Medical Center hospital.

### B. COMPENSATION

The Consultant shall be compensated for the services provided under this Agreement as follows:

#### 1. Teaching Services

- a. For services rendered pursuant to paragraph 1a in Section A above, Consultant shall be paid \$672.60 per month, which represents \$67.26 per teaching hour, not to exceed \$8,071.20. Consultant shall be paid by County by the 15<sup>th</sup> of the month, provided that the County receives a "Blue Claim" form by Consultant no later than the 3<sup>rd</sup> day of each month following the month in which payment is requested.
- b. For services rendered pursuant to paragraph 1b in Section A above, Consultant shall be paid \$250.00 for each noon conference, not to exceed

\$1,000.00. Consultant shall submit a statement for each conference conducted to the HSA Residence Program Director for payment.

## 2. MIA/IHCP Reimbursement

For services rendered pursuant to paragraph 2 in Section A above, Consultant shall be paid \$29.00 per ASA unit for anesthesia services rendered to proven Medically Indigent Adult patients treated at Doctor's Medical Center. Consultant shall bill IHCP for services rendered under this Agreement within sixty (60) days of rendering such services by submitting completed claims using a form acceptable to County. IHCP agrees to provide payment for authorized services within thirty (60) days from date the claim is received. Payment shall be made to Consultant by the County Auditor's Office on behalf of the County's Indigent Health Care Program.

The parties hereto acknowledge the total maximum amount to be paid by the County for all services described in Section A above and provided under this Agreement shall not exceed \$209,000.00 including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to perform or to assist in the performance of its work under this Agreement.

## **C. PROFESSIONAL MALPRACTICE LIABILITY PROTECTION**

County shall provide Consultant with professional medical malpractice liability protection, including defense and indemnification for actions arising from Consultant's provision of patient care services pursuant to the terms of this Agreement and which are not subject to coverage by the malpractice program provided by the University of California to contractors who hold a volunteer clinical faculty appointment as described in the current "Affiliation Agreement Between the Regents of the University of California and Stanislaus County." In the event of dispute over coverage between County and University of California for acts committed pursuant to the terms of this Agreement, County will provide medical malpractice defense and indemnification to Consultant. Furthermore, County shall provide "tail" coverage for acts and omissions of Consultant for services performed under the scope of this Agreement. Notwithstanding the foregoing, Consultant must provide professional malpractice protection for any and all medical services or patient care provided outside the course or scope of this Agreement and in his or her private practice, if any. It is further understood and agreed by the parties that this Agreement shall be terminated in the event that County is unable to provide professional liability protection to Consultant through the County's professional liability program and in the event of such termination, Consultant will be paid for services provided up to the date of termination.

## **D. INSURANCE**

The requirements under Section 6, Insurance, contained in the body of this Agreement shall not apply.

## **E. CONFIDENTIALITY AND COMPLIANCE**

Section 10 of the Agreement is hereby amended to read as follows:

10.1 Through this Agreement, County and Consultant are parties to an agreement in which confidential patient information is necessarily shared with Consultant in fulfillment of the Agreement. Under the terms of this Agreement:

- 10.1.1 Consultant shall not (a) use or otherwise disclose confidential patient information for any purpose other than the purpose expressly stated in this Agreement and (b) use or disclose such confidential patient information in a manner that violates or would violate HIPAA regulations.
- 10.1.2 Consultant shall implement and maintain necessary safeguards to ensure that confidential patient information is not used or disclosed by Consultant, except as provided in this Agreement.
- 10.1.3 Consultant shall promptly report to County any use or disclosure of confidential patient information of which Consultant becomes aware that is not provided for or permitted in this Agreement. Consultant shall permit County to investigate any such report and to examine Consultant's premises where work under this Agreement was performed.

10.2 During the term of this Agreement and while performing services under this Agreement, Consultant shall make every effort to comply with the Health Insurance Portability and Accountability Act of 1996, as amended, which stipulates a provider's responsibility to prevent health care fraud and abuse. At a minimum, the Consultant shall be solely responsible for (1) providing all appropriate Common Procedural Terminology (CPT) codes for professional services using guidelines promulgated by the American Medical Association and specific diagnosis code(s) for each patient encounter; such codes shall be recorded, in accordance with HSA policy, on each patient's billing form; (2) ensuring complete, thorough, and accurate medical record documentation related to each patient encounter; (3) complying with all HCFA coding, documentation, and medical necessity requirements of treatment; and (4) providing appropriate diagnosis codes for medically necessary ancillary testing

10.3 Pursuant to Section 6032 of the Deficit Reduction Act of 2005, Consultant shall communicate to its employees, subcontractors, agents and other persons providing services on behalf of Consultant the policies and procedures related to the Federal and State False Claim Act. Consultant agrees that it has received a copy of the False Health Care Claims Policy approved by the Board of Supervisors on May 8, 2007 and that it and its employees, subcontractors, agents and other persons providing services on behalf of Consultant will comply with and adhere to these policies and procedures.

This provision of the Agreement shall survive the termination or conclusion of this Agreement and shall survive indefinitely.



## **F. TERM**

The term of this contract will begin July 1, 2007 and terminate June 30, 2008. Either party may terminate this Agreement for convenience and without cause upon

providing thirty (30) days prior written notice to the other party. Upon termination of this Agreement, the County will pay to Consultant all amounts owing to Consultant for services and work satisfactorily performed.

## **G. MISCELLANEOUS PROVISIONS**

### 1. Federal Qualified Health Center ("FQHC") requirements:

- a. Consultant agrees to accept referred County FQHC patients for evaluation and/or treatment in accordance with community and professional standards upon appropriate referral.
- b. Consultant agrees to seek and accept payment from the patient's guarantor.
- c. Consultant shall maintain current, unrestricted state licensure to practice and shall not be or have been excluded from participation in the Medicare and/or Medicaid program.
- d. County shall not require or monitor the care and/or treatment provided. However, Consultant agrees to share reasonable encounter and treatment data with County, as requested.

### 2. Federal Access to Records:

To the extent necessary to prevent disallowance of reimbursement under Section 1861 (v)(1)(I) of the Social Security Act, until the expiration of four (4) years after the furnishing of services under this Agreement, Consultant shall make available, upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of services provided by Consultant under this Agreement. Consultant further agrees that in the event Consultant carries out any of its duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period with a related organization such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents and records or such organization as are necessary to verify the nature and extent of such costs.

### 3. Funds Recovery:

Under circumstances in which the IHCP has been advised or has discovered that a patient is eligible for Medi-Cal, IHCP will request a refund of all payments made for services rendered during the period the patient was eligible for Medi-Cal. A letter will be sent to the Consultant requesting a refund within thirty (30) days of the notification. All information known to IHCP which may assist the Consultant in collecting payment from Medi-Cal will accompany the request for refund. If no refund is received within thirty (30) days, the amount will be deducted from payments being processed by IHCP for any current claims submission.

AMENDMENT

To

*M call  
Urology*

Agreement for Independent Contractor Services

This is an Amendment to the Agreement for Independent Contractor Services between the Stanislaus County Health Services Agency (County) and McHenry Medical Group, Inc. (Contractor) for Surgical Consult services that was effective on July 1, 2007 and amended to include Urology Clinic services on January 1, 2008. This Amendment is effective July 1, 2008.

WHEREAS, the parties have agreed to extend the existing agreement as modified below,

NOW, THEREFORE, the parties hereby agree as follows:

The term of the Agreement shall be extended through August 31, 2008.

COUNTY OF STANISLAUS

*Mary Ann Lee*  
Mary Ann Lee, Managing Director  
Health Services Agency

Date: 8/4/08

CONTRACTOR

*Phillip W Beck*  
McHenry Medical Group, Inc.

Date: 7/22/08

APPROVED AS TO FORM:

*DW*  
Dean Wright, Deputy County Counsel

Date: 7/12/08

REC'D ACCOUNTS / PAYABLE

AUG - 5 2008

HEALTH SERVICES AGENCY

2008-0600

AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES

*For On Call Svcs*

This Agreement For Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and McHenry Medical Group, Inc. ("Contractor").

Recitals

WHEREAS, the County has a need for services involving licensed physicians practicing at Doctor's Medical Center capable of providing 24-hour availability of surgical consults and, when medically necessary, surgical intervention on these patients to County family practice residents and physicians; and

WHEREAS, the Contractor is trained, staffed, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. Scope of Work

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in Exhibit A, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. Consideration

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and material men shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers'

Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of the Contractor; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

## 7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's



officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

## 8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents,

representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

## 10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

## 11. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's

nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus  
Department of Health Services Agency  
Attention: Managing Director  
P.O. Box 3271  
Modesto, CA 95353

To Contractor: McHenry Medical Group, Inc.  
1541 Florida Avenue, #300  
Modesto, CA 95350

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS  
HEALTH SERVICES AGENCY DEPT.

CONTRACTOR  
McHenry Medical Group, Inc.

By: Mary Ann Lee  
Mary Ann Lee, Managing Director

By: [Signature]  
Its: Vice President

Date: 8/29/07

Date: 8/15/07

APPROVED AS TO FORM FOR USE  
THROUGH JUNE 30, 2008:

By: Dean Wright 8/30/07  
Dean Wright, Deputy County Counsel

## EXHIBIT A

### A. SCOPE OF WORK:

1. Contractor shall provide medically necessary surgical consults to patients admitted to Doctor's Medical Center as requested by County Physicians for medical patients under their care and treatment.
2. Contractor shall be available for such surgical consults on a 24-hour basis either by telephone or in person, depending upon the condition of the patient. Such consults shall be provided in an appropriate and timely manner, considering the nature of the suspected surgical problem and the medical needs of the patient. In no case shall a requested surgical consult be unnecessarily delayed by Contractor.
3. When surgical intervention is determined by Contractor to be necessary, Contractor agrees to perform such necessary surgery, including post-operative care, and to seek payment solely from patient and/or patient's third party medical insurance.
4. In addition to requested surgical consults, Contractor agrees to be available to Residents and County physicians on a 24-hour basis for reasonable questions regarding potential surgical intervention on hospitalized medical patients under their care and treatment.

### B. COMPENSATION:

1. In consideration of the above, Contractor shall be paid \$500 for each calendar day during the term of this Agreement.
2. Contractor shall submit a "Blue Claim" form to Health Services Agency ("HSA") by the 5<sup>th</sup> of each month for each day service was available in the previous month. Payment will be made by County to Contractor for all monies due and owing from the previous month by the 15<sup>th</sup> of each month during the term of this Agreement.
3. Total compensation under the terms of this Agreement shall not exceed \$150,000.00.

### C. CONFIDENTIALITY:

Through this Agreement, County and Contractor are parties to an agreement in which confidential patient information is necessarily shared with Contractor in fulfillment of the Agreement. Under the terms of this Agreement, Contractor shall not (a) use or otherwise disclose confidential patient information for any purpose other than the purpose expressly stated in this Agreement and (b) use or disclose such confidential patient information in a manner that violates or would violate HIPAA regulations.

Contractor shall implement and maintain necessary safeguards to ensure that confidential patient information is not used or disclosed by Contractor, except as provided in this Agreement.

Contractor shall promptly report to County any use or disclosure of confidential patient information of which Contractor becomes aware that is not provided for or permitted in this Agreement. Contractor shall permit County to investigate any such report and to examine Contractor's premises where work under this Agreement was performed.

This Section shall survive the termination or conclusion of this Agreement and shall survive indefinitely.

#### D. COMPLIANCE:

During the term of this Agreement and while performing services under this Agreement, Contractor shall make every effort to comply with the Health Insurance Portability and Accountability Act of 1996, as amended, which stipulates a provider's responsibility to prevent health care fraud and abuse and maintain patient confidentiality. At a minimum, the Contractor shall be solely responsible for (1) providing all appropriate Common Procedural Terminology (CPT) codes for professional services using guidelines promulgated by the American Medical Association and specific diagnosis code(s) for each patient encounter; such codes shall be recorded, in accordance with HSA policy, on each patient's billing form, (2) ensuring complete, thorough, and accurate medical record documentation related to each patient encounter, (3) complying with all HCFA coding, documentation, and medical necessity requirements of treatment, and (4) providing appropriate diagnosis codes for medically necessary ancillary testing.

#### E. OFFICE SPACE, SUPPLIES, EQUIPMENT

County shall provide such office space, supplies, equipment, reference materials and telephone service as is necessary for Contractor to provide the services.

#### F. PROFESSIONAL MALPRACTICE LIABILITY PROTECTION:

County shall provide to Contractor professional malpractice liability protection covering patient care services rendered by Contractor while performing his/her responsibilities under the terms of this Agreement. Contractor must provide professional malpractice protection for any and all services or care provided outside the course or scope of this agreement and in his/her private practice. It is further understood and agreed that this Agreement shall be terminated in the event that the County is unable to provide professional liability protection to Contractor through the County's professional liability program. Furthermore, County shall provide "tail" coverage for acts and omissions of Contractor for services performed under the scope of this Agreement.

#### G. INSURANCE:

The requirements under Section 6, Insurance, contained in the body of this Agreement shall not apply.

#### H. RECORDS AND AUDIT

The requirements under Section 9, Records and Audit, contained in the body of this Agreement shall not apply.

#### I. TERM:

The term of this contract will begin July 1, 2007 and terminate June 30, 2008. Either party may terminate this Agreement for convenience and without cause upon providing thirty (30) days prior written notice to the other party. Upon termination of this Agreement, the County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed.



HEALTH SERVICES AGENCY REQUEST FOR CONTRACT, AGREEMENT  
(Note: New Contractors may not start work until contract has been approved by Chief Executive office and returned to HSA)

New Request  
 Renewal  
 Modification

CONTRACT NO. \_\_\_\_\_  
(INTERNAL USE ONLY)

REQUESTED BY: CINCY COIT (Name) ADMIN (Department)

FUNDING SOURCE: 01/4057 BUDGET INDEX  
8240 PROGRAM  
CONTRACT BUDGET/POSITION NUMBER

Personal Service Contract  
 Independent Contract  
 W-9 completed & attached  
(INDEPENDENT CONTRACT ONLY)  
 Agreement

CONTRACTORS'S INFORMATION:

RETIRED COUNTY EMPLOYEE  YES  NO

NAME: McHENRY MEDICAL GROUP SOCIAL SECURITY #: \_\_\_\_\_

ADDRESS: 1541 FLORIDA AVE STE 200 OR  
MODESTO, CA 95350 FEDERAL TAX ID #: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_  
BASE RATE \$ \$500 PER MAXIMUM WEEKLY HOURS \_\_\_\_\_  
24 HRS  
MILEAGE/TRAVEL NOT TO EXCEED \$ \_\_\_\_\_

PERSONAL SERVICE CONTRACT ONLY  
 Department requested to call the Payroll Department upon approval of PSC to set up orientation/new hire appointment, 8-7106.  
 Complete New Hire form and forward to Payroll Department.

TITLE OF POSITION/LOCATION(S): \_\_\_\_\_

MALPRACTICE COVERAGE PROVIDED BY COUNTY:  Yes  No

DESCRIPTION OF SERVICE/SCOPE OF SERVICE TO BE PROVIDED (Be specific, use additional sheet if necessary)

ON CALL SVCS. FOR RESIDENTS PER CONTRACT

START DATE: 7/1/2007 \* EXPIRATION DATE: 6/30/2008

DOES POSITION REQUIRE CREDENTIALING?  YES  NO  
IF YES, HAS THE PROCESS BEEN STARTED?  YES  NO  
CREDENTIALS APPROVED BY THE MEDICAL STAFF OFFICE? \_\_\_\_\_

\* 30 day out clause  
RENEWAL

(MSO SIGNATURE)  
WILL CONTRACTOR UTILIZE A MOTOR VEHICLE IN PERFORMING ANY OF HIS/HER WORK?  YES  NO  
If yes, attach copy of contractor's proof of insurance.

\* NOTE: New Contractors may not start work until Contract has been approved by Chief Executive Office and returned to HSA. Please allow a minimum of twenty (20) working days for processing of requests. Contracts with outside agencies, other counties or businesses must be approved by the Board of Supervisors. Allow a minimum of thirty (30) days to secure approval.

Reviewed and approved by:  
(Initial & Date  
to verify approval)

Division/Senior Manager  
Financial Liaison  
Chief Financial Officer  
Payroll (PSC Only)  
Patient Finance Mgr

CP  
CP  
CP  
N/A  
   
 

5/31/07  
5/31/07  
5/31/07  
N/A  
   
 

Drug test completed for contractors not currently on  
County payroll?