



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
Health System



**DATE:** June 3, 2011  
**BOARD MEETING DATE:** June 28, 2011  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** Jean S. Fraser, Chief, Health System  
Susan Ehrlich, MD, MPP, Chief Executive Officer  
San Mateo Medical Center

**SUBJECT:** Agreement with Alliance HealthCare Services, Inc. a Delaware corporation doing business as Alliance Imaging

**RECOMMENDATION:**

Adopt a Resolution authorizing the:

- A) President of the Board to execute an Agreement with Alliance HealthCare Services, Inc., a Delaware corporation doing business as Alliance Imaging, for Mobile Magnetic Resonance Imaging services for the term of April 15, 2011 through April 14, 2016, for a maximum obligation of \$2,575,000; and
- B) Chief of the Health System or designee to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

**BACKGROUND:**

Alliance HealthCare Services, Inc., a Delaware corporation doing business as Alliance Imaging (Alliance Imaging) has been providing services to San Mateo Medical Center (SMMC) since 2003. Having an on-site Magnetic Resonance Imaging (MRI) service has improved the quality of care, and access to this critical diagnostic tool has generated new revenue while improving patient and physician satisfaction. A Request for Proposals (RFP) for MRI services was issued in December 2010. The evaluation team recommends that Alliance Imaging be awarded a contract based on cost, compliance with Joint Commission standards, the ability to integrate with the SMMC's existing systems, and flexibility of scheduling.

**DISCUSSION:**

Alliance Imaging is offering a preferred rate for extending the term of the new Agreement to 5 years. Accordingly, the County Manager's Office has approved a waiver of the three year contract term in favor of a five year agreement, which can be

terminated at any time. In addition, Alliance Imaging has extended its service from 3 to 5 days per week, eight patient hours a day, (including equipment and technician) for a five year term. The expanded service days will improve patient access to MRI services. The Agreement has been delayed due to extensive negotiations.

County Counsel has reviewed and approved the Agreement and Resolution as to form. The Contractor's insurance has been reviewed and approved by Risk Management.

The Contractor has assured compliance with the County's Contractor Employee Jury Service Ordinance, as well as all other contract provisions that are required by County ordinance and administrative memoranda, including but not limited to insurance, hold harmless, non-discrimination and equal benefits.

This Agreement contributes to the Shared Vision 2025 outcome of a Healthy Community by providing access to quality care for SMMC patients. It is anticipated that SMMC's cost per adjusted patient day will increase from \$881 to \$918.

**Performance Measure:**

Measure	FY 2010-11 Actual	FY 2011-12 Projected
SMMC cost per adjusted patient day	\$881	\$918*

\*Due to increase in operating costs

**FISCAL IMPACT:**

The term of the Agreement is April 15, 2011 through April 14, 2016. The maximum fiscal obligation is \$2,575,000. Funds in the amount of \$107,500 are included in the SMMC Adopted FY 2010-11 Budget. Funds in the amount of \$516,000 are included in the SMMC tentatively Adopted FY 2011-12 Budget. Similar arrangements will be made for future years.

Expenses at SMMC are covered by fees for services or third-party payors whenever possible. The portion of expenses for services provided to the medically indigent or to those covered by programs that do not meet the full costs of care are covered by the County's General Fund contribution to SMMC.

### Request for Proposals Matrix

1.	General Description of RFP	Seeking a Mobile Magnetic Resonance Imaging Service
2.	List key evaluation criteria	Provide Mobile Magnetic Imaging Services to patients at San Mateo Medical Center
3.	Where advertised	San Mateo Medical Center Website
4.	In addition to any advertisement, list others to whom RFP was sent	Alliance Imaging Calscan Insight Imaging Kosmic Medical Mobile Interim Solutions Shared Imaging Sound Imaging Inc. Sparrow Medical
5.	Total number sent to prospective proposers	8
6.	Number of proposals received	4
7.	Who evaluated the proposals	Ron Keating Jackie Pelka Gayle Hawkins Rita Kavanaugh
8.	In alphabetical order, names of proposers (or finalists, if applicable) and location	Alliance Imaging Calscan Medical Enterprises, Inc. Shared Imaging

**RESOLUTION NO. \_\_\_\_\_**

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

\* \* \* \* \*

**RESOLUTION AUTHORIZING THE A) PRESIDENT OF THE BOARD TO EXECUTE AN AGREEMENT WITH ALLIANCE HEALTHCARE SERVICES, INC., A DELAWARE CORPORATION DOING BUSINESS AS ALLIANCE IMAGING, FOR MOBILE MAGNETIC RESONANCE IMAGING SERVICES FOR THE TERM OF APRIL 15, 2011 THROUGH APRIL 14, 2016, FOR A MAXIMUM OBLIGATION OF \$2,575,000; AND B) CHIEF OF THE HEALTH SYSTEM OR DESIGNEE TO EXECUTE CONTRACT AMENDMENTS WHICH MODIFY THE COUNTY'S MAXIMUM FISCAL OBLIGATION BY NO MORE THAN \$25,000 (IN AGGREGATE), AND/OR MODIFY THE CONTRACT TERM AND/OR SERVICES SO LONG AS THE MODIFIED TERM OR SERVICES IS/ARE WITHIN THE CURRENT OR REVISED FISCAL PROVISIONS**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, San Mateo Medical Center (SMMC) staff has recommended that Alliance HealthCare Services, a Delaware corporation doing business as Alliance Imaging (Alliance Imaging) be awarded a contract for provision of magnetic resonance imaging (MRI) services; and

**WHEREAS**, there has been presented to this Board of Supervisors for its consideration and acceptance an Agreement, reference to which is hereby made for further particulars, whereby Alliance Imaging will provide MRI Services for the San Mateo Medical Center for the term April 15, 2011 to April 14, 2016, for an amount not to exceed \$2,575,000; and.

**WHEREAS**, this Board has been presented with a form of such Agreement, has examined and approved it as to both form and content, and desires to enter into it.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the President of this Board of Supervisors be and is hereby authorized and directed to execute said Agreement for and on behalf of the County of San Mateo, and the Clerk of the Board shall attest the President's signature thereto.

**BE IT FURTHER RESOLVED** that the Chief of the Health System or designee is authorized to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

\* \* \* \* \*

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
Alliance HealthCare Services, Inc., a Delaware corporation, doing business as  
Alliance Imaging**

THIS AGREEMENT, entered into this 12th day of May, 2011, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Alliance HealthCare Services, Inc., a Delaware corporation, doing business as Alliance Imaging, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of Magnetic Resonance Imaging (MRI) staff and services.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Exhibit E – Corporate Compliance SMMC Code of Conduct (Third Parties)

Attachment I—§504 Compliance

**2. Services to be performed by Contractor**

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make

payment to Contractor based on the rates and in the manner specified in Exhibit "B." In no event shall the County's total fiscal obligation under this Agreement exceed TWO MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS [\$2,575,000].

**4. Term and Termination**

The term of this Agreement shall be from April 15, 2011 through April 14, 2016, unless earlier terminated in accordance with the terms and conditions of this Agreement.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

**5. Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

**6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

**7. Hold Harmless**

Each party hereto shall indemnify and hold the other party harmless from and against any and all liability, loss, damage, cause of action, cost or expense (including reasonable attorney's fees) arising out of, or in any way connected with, any negligent or intentional act or failure to act, any breach of any representation or warranty under this Agreement, or any other wrongful conduct by the respective party, its members, agents, employees or subcontractors in the performance of its duties under this Agreement. The parties agree that upon receipt of a claim or demand for which a party is entitled to indemnification, the indemnified party shall: (i) provide the indemnifying party with prompt written notice of any indemnifiable claim; (ii) permit the indemnifying party to assume sole control of the defense with counsel selected by the indemnifying party; (iii) furnish the indemnifying party with all documents and information within the possession, custody, or control of the

indemnified party relating to such claim; (iv) reasonably cooperate with the indemnifying party and its counsel; and (v) not enter into any oral or written negotiation, settlement, or compromise of any indemnifiable claim without the indemnifying party's prior written consent. In the event the indemnifying party defends the indemnifiable claim, it may do so under a reservation of its rights to cease the defense of the claim at a later date (upon reasonable prior written notice to the indemnified party) in the event it is determined that the indemnifying party has no obligation to defend or indemnify the claim.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

#### **8. Assignability and Subcontracting**

Neither party shall assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

#### **9. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, which approval shall not be unreasonably withheld, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including



accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability . . . . . \$1,000,000
- . . .
- (b) Motor Vehicle Liability Insurance . . . . . \$1,000,000
- . . .
- (c) Professional Liability . . . . . \$1,000,000
- . . .

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

**10. Compliance with laws; payment of Permits/Licenses**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. The parties agree that, pursuant to Section 70713 of Title 22 of the California Code of Regulations ("Title 22"), the facility retains all professional and administrative responsibility for services rendered under this Agreement and that this Agreement is otherwise subject to any applicable requirements of Title 22. Further, Contractor certifies that the Contractor and all of

its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**11. Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
  - i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation;
  - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any such person who is employed by Contractor and provides services under this Agreement in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

**12. Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

**13. Retention of Records, Right to Monitor and Audit**

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

**14. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

**15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

**16. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be in writing and deemed to be properly given when either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

**In the case of County, to:**  
San Mateo Medical Center  
222 W. 39<sup>th</sup> Avenue  
San Mateo, CA 94403

**In the case of Contractor, to:**  
Alliance HealthCare Services, Inc., a Delaware corporation doing  
business as Alliance Imaging  
100 Bayview Circle, Suite 400  
Newport Beach, CA 92660  
ATTN: General Counsel

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo  
County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

Alliance HealthCare Services, Inc., a Delaware corporation doing business as  
Alliance Imaging

\_\_\_\_\_  
Contractor's Signature  
Eli H. Glovinsky, EVP, General Counsel, Secretary

Date: \_\_\_\_\_

Long Form Agreement/Non Business Associate  
SMMC rev. 1/25/11

## Exhibit "A"

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services.

### 1. EQUIPMENT AND SERVICES.

1.1 **The Unit.** Contractor shall provide a 1.5T mobile Magnetic Resonance Imaging ("MRI") system (the "Unit"). If the Unit described is unavailable, a reasonably comparable Unit may be substituted when approved by the Radiologists and San Mateo Medical Center, which approval shall not be unreasonably withheld.

### 1.2 Personnel.

a) **Provision of Personnel.** Contractor shall provide the services of qualified licensed technical personnel to operate the Unit as appropriate for County's procedure volume. Contractor shall ensure that all services provided by Contractor's technical personnel (including, but not limited to, any patient coordinator) shall be within the scope of his/her respective duties as technical personnel. Nothing in this Agreement shall be construed to obligate Contractor to violate any applicable employment laws or regulations, and Contractor personnel shall be entitled to take all breaks as required under any applicable laws or regulations.

b) **Non-Solicitation.** County agrees not to hire or contract with any Contractor employee during the term of this Agreement, including renewals, and for a period of one (1) year after services cease (collectively, the "Non-Solicitation Period"), without Contractor's prior written consent. Contractor and County hereby agree that in the event of a breach of this provision damages shall be difficult to calculate and therefore agree Contractor shall be entitled to receive six (6) times the monthly average salary of such employee for the past twelve months (or such shorter period as the employee may have been employed by Contractor). Contractor and County agree that the aforementioned amounts are reasonable and shall constitute liquidated damages and not a penalty.

c) **Disclosure of Personnel Information.** Notwithstanding anything to the contrary in this Agreement, County agrees, for as long as Contractor remains a Joint Commission-accredited organization, that County shall not need to independently verify, and shall not require any oral information or written documentation concerning the credentialing, education, training, evaluation, or competencies related to any of Contractor's technical personnel beyond the following, which documentation set composition may be modified from time-to-time by Contractor in its reasonable discretion and which Contractor will provide to County in writing upon request: (a) a description of the competencies related to Contractor's technical personnel who provide services on the Unit; (b) copies of any licenses and certifications for such personnel; (c) evidence that all vaccination test(s) required by applicable State law or regulation have been taken by such personnel; (d) a job description for the technologist(s) providing services on the Unit; and (e) a letter from Contractor's Vice President of Human Resources or designee attesting that criminal investigation background checks have

been performed for each of Contractor technical personnel who provide services on the Unit and that such personnel meet the requirements to be employed by Contractor. Contractor shall not be obligated to provide any background check report, drug test report or result, or job performance evaluation for any of Contractor's technical personnel. Further, notwithstanding anything to the contrary in this Agreement, in the event of a Joint Commission survey of County, Contractor, upon request by the Joint Commission surveyor, shall have the personnel file of Contractor's technical personnel accessible to the surveyor only for review as may be required by the Joint Commission.

d) **Confidentiality of Personnel Information.** County acknowledges that all verifications, documents, electronic data, and other materials concerning Contractor personnel that Contractor provides or makes accessible in connection with this Agreement (collectively, "Confidential Personnel Information") are valuable property of Contractor, and County undertakes that, during the term of this Agreement and thereafter until such time that the Confidential Personnel Information otherwise becomes publicly available other than through breach of this Section 1.2(d), County shall: (i) treat the Confidential Personnel Information as trade secret and confidential assets of Contractor's business; (ii) not disclose (directly or indirectly, in whole or in part) the Confidential Personnel Information to any third-party except with the prior written consent of Contractor or when and if properly disclosed in connection with the Centers for Medicare and Medicaid Services ("CMS"), The Joint Commission, or other applicable federal and state compliance surveys, audits, reviews and record requests or as required by law; (iii) not use (or in any way appropriate) the Confidential Personnel Information for any purpose other than compliance with CMS, The Joint Commission, or other applicable federal and state requirements and/or as required by law; (iv) limit the dissemination of and access to the Confidential Personnel Information to County's officers, managers, employees, agents, attorneys, consultants, professional advisors or representatives on a need to know basis as may reasonably be required for the performance of County's compliance obligations outlined above, provided County ensures that such individuals and entities observe all the confidentiality obligations set forth in this Section 1.2(d); (v) be entitled to use the Confidential Personnel Information only in good faith for the legitimate conduct of its business activities, and shall not in any case use such Confidential Personnel Information to gain a competitive advantage or for purposes unrelated to compliance with CMS, The Joint Commission, or other applicable federal or state requirements; and (vi) return any and all Confidential Personnel Information to Contractor promptly upon the termination or expiration of this Agreement, including but not limited to all such materials, documents, information and electronic data, regardless of how stored or maintained, and including all originals and copies.

1.3 **Maintenance.** Contractor shall use reasonable efforts to cause the Unit to be maintained in good operating condition. Contractor may do so through the purchase of a maintenance contract from the MRI Unit manufacturer or otherwise, in its discretion. Contractor shall provide cryogenics. Contractor will provide written maintenance reports of the Unit reasonably promptly after a request by the County.

## 2. SCANNING ACTIVITIES.

**2.1. Unit.** County shall prepare and maintain a safe and suitable site for the Unit which complies with the manufacturer's specifications (which shall be provided by Contractor) and all applicable laws and regulations. All site costs (for example, costs of tractor/trailer access and egress, power and telephone expenses) shall be County's responsibility. The Unit Location shall be San Mateo Medical Center, 222 West 39<sup>th</sup> Avenue, San Mateo, California 94403. County represents and warrants to Contractor that it currently owns or has authorization to site the Unit at the Unit Location. Further, County further warrants and agrees that, at all times during the term of this Agreement, County shall maintain the authorization or ownership to site the Unit at the Unit Location. County shall indemnify and hold Contractor harmless from any damages or liability arising out of breach of the representations and warranties in this Section 2.1.

County may request in writing to Contractor that the Unit Location be moved, in which case any such move shall be subject to Contractor's prior approval; all of the obligations under this Section 2.1 shall apply to the new Unit Location. The Unit must be maintained in 'roadworthy' condition throughout term of this Agreement.

**2.2 Power.** County shall provide electrical power, including a dedicated power line with 200 amps and 480 volts of three-phase power. County shall promptly report any problems with power (for example, sags or surges) to Contractor. County shall provide the power line, a lockable disconnect box and receptacle within twenty-five (25) feet of the electrical receptacle on the Unit. If the power is modified in any way by the County, County must notify Contractor prior to such modification to ensure it meets with equipment specifications. Should the County experience a brown out or a complete power failure, the County must notify Contractor immediately to mitigate any potential damage to the equipment. Should the County not notify Contractor of any power issues the County is responsible for any damage to the equipment.

**2.3 Phone and Connectivity.** County shall provide the Unit with a voice telephone line, a dedicated fax compatible telephone line and a RJ-45 Ethernet broadband line with an automatic IP address assignment using Dynamic Host Control Protocol ("DHCP") and a proxy-less connection to the internet.

**2.4 Operation.** The Unit shall be operated only by employees or approved subcontractors of Contractor. Such employees or contractors shall be approved by the County which approval shall not be unreasonably withheld.

**2.5 Medical Director.** County shall appoint a qualified and licensed physician to act as Medical Director hereunder, along with another such physician to act in his absence (the "Medical Director"). County shall ensure that all orders for diagnostic procedures under this Agreement are made only by a licensed physician. County shall be solely responsible for all activities which constitute the practice of medicine (for example, providing medical advice to patients in connection with MRI procedures and the injection of contrast agents). County shall obtain any written consents from patients that are required by the USFDA, state or local law or prudent medical practice. County shall



have full responsibility for all medical care and advice provided to patients. All medical care shall be provided under the ultimate supervision of the Medical Director.

**2.6 Medical Supplies; Emergency Care.** County shall provide all medical supplies which may be required (including film and film processing, gowns, medications and contrast agents) and shall ensure the immediate availability at all times of equipment and personnel to treat patients who require emergency or other medical care (including a cardiac monitor, a fresh oxygen supply, an aspirator and a defibrillator). Unit personnel will be responsible for communicating MRI supplies inventory needs and deficiencies to SMMC Supervising staff in timely manner to assure adequate supplies and contrast material on hand for patient use.

**2.7 Patient Handling.** County shall be responsible for the prompt pick up and delivery of Emergency Department and in-patients to and from their rooms or other designated areas. The Unit patient coordinator or Contractor technologist will be responsible for outpatient escort between the Radiology Department and the mobile van with SMMC providing assistance as needed for patient safety.

**2.8 Procedure Scanning Activities.**

2.8.1 To provide optimum patient scans and throughput, the MRI technologist will discuss unusual orders directly with the Radiologists prior to scanning patients including abnormal lab results, clinical indications, inappropriate or questionable orders.

2.8.2 Contractor staff will confirm image transmission of every procedure before end of work day and provide film jacket in reading area for interpretation.

2.8.3 Contractor staff will enter correct patient demographic information into the MRI system prior to scan and transmission to the PACs system.

2.8.4 Procedure quality must be maintained at level approved by Radiologists. Any procedure reasonably deemed unacceptable and requiring repeat or additional imaging will be done at no cost to SMMC.

**2.9 Patient Log.** Contractor shall maintain a log of all procedures performed on the Unit. County shall be provided with copies of the daily log. A monthly tracker will be maintained by Radiology Supervisor and Contractor's Manager of Operations.

**2.10 Modifications.** County shall not modify or alter the Unit without Contractor's prior written consent. County shall not allow any portion of the Unit to become permanently attached to real property. County agrees that, upon request, County shall sign any documents (e.g., a UCC financing statement) evidencing a first priority security interest, mortgage, or assignment in favor of any company (e.g., the original equipment manufacturer) providing financing to Contractor for the Unit. Nothing in this Section 2.10, shall affect any ownership interest that County has in its own property.

**2.11 Scheduling.** County shall use reasonable efforts to schedule its patients consecutively from the beginning of each service day to minimize unutilized scanning time and to prescreen patients for conditions unsuitable for MRI procedure. Contractor reserves the right to release its technical personnel and/or Unit from County's facility after the completion of the last scheduled procedure on any given service day in which no more patients are scheduled provided the technologist(s) have confirmed with the County's Radiology Supervisor or designee that no additional patients shall be added to the schedule for that particular service day. See also Section 4, SCHEDULING, below.

**2.12 Notification of Physicians; Use of Service.** County shall notify its staff of physicians of the availability of the Unit and shall use all reasonable efforts to encourage physicians to utilize the Unit for their patients' needs.

**2.13 Document Retention.** If the value or cost of services rendered pursuant to this Agreement is \$10,000 or more over a 12-month period, in accordance with Section 1861(v)(1)(I) of the Social Security Act, Contractor agrees that until the expiration of four (4) years after the furnishing of services under this Agreement, Contractor shall make available, upon written request by the Secretary of the U.S. Department of Health and Human Services, or upon request by the Comptroller General of the United States, or any of their duly authorized representatives, such contracts, books, documents, and records of Contractor that are necessary to certify the nature and extent of such costs.

If Contractor carries out any of the duties of this Agreement through a subcontract with another organization and the value or cost of such subcontracted services is \$10,000 or more over a twelve (12) month period, such subcontract shall contain a clause to the same effect as this provision.

**2.14 Licenses.** County shall obtain and maintain all required licenses and regulatory approvals necessary to operate the Unit at County's premises. Contractor shall reasonably cooperate to assist County to obtain such licenses and approvals.

**2.15 Taxes.** All taxes, if any (for example, sales, use or similar taxes), on the services hereunder shall be the responsibility of County but are included in and subject to the not-to-exceed amount listed in Paragraph 3, Payments, of the Agreement.

**2.16 Professional Interpretations.** County shall provide radiologists to provide clinical interpretations of MRI procedures for County patients. Contractor shall not be responsible for providing any such interpretations.

**2.17 Patient Records.** County shall maintain patient records for each patient who receives procedures performed under this Agreement.

**3. FEES and BILLING.** County shall pay Contractor Fees that are set forth in Exhibit B to this Agreement. All fees for a billing period shall be due and payable within thirty (30) days of the last day of such period. County shall pay a late fee of one and one-quarter percent (1-1/4%) or the maximum legal rate, whichever is less, on all

balances outstanding more than fifteen (15) days beyond the due date. County shall be responsible for all billings to County patients and/or third party payors for MRI procedures performed on the Unit. County's obligation to pay Contractor compensation in accordance with the provisions of this Agreement shall not be dependent upon County's billing and collection of patient and/or third party payor accounts receivable. Contractor shall not bill, and Contractor shall not cause bills to be submitted to, any patient or third party payor for MRI procedures performed on the Unit. Both parties agree that Contractor is providing its services set forth in this Agreement "under arrangement" with County, such that upon County's receipt of payment from the Medicare program for MRI procedures performed in the Unit, the liability of the beneficiary or any other person to pay for such services shall be fully discharged.

**4. SCHEDULING.** Contractor shall make the Unit available to the County, and County agrees to accept the Unit five (5) days per week, eight (8) patient care hours per day. Contractor shall make the Unit available to County according to the schedule specified in this Section. Contractor currently observes the following holidays, which may be increased from time-to-time: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. The day of service begins upon initiation of the setup procedures for the Unit and ends upon completion of the shutdown procedures for the Unit.

**5. INSURANCE.**

**5.1 Insurance.**

a) **Contractor.** Contractor shall maintain insurance pursuant to Item 9 of the Agreement.

b) **County.** County shall maintain comprehensive general and professional liability insurance covering the County, its employees, staff and physicians and shall require the Medical Director and other physicians who interpret or report on procedures performed on the Unit to maintain professional liability insurance. All such insurance shall be in amounts and with deductibles that are customary in the industry. County shall bear the risk of loss or damage to the Unit from County's negligent actions or omissions.

**6. GENERAL.**

**6.1 Independence.** Contractor is an independent contractor of County, and this Agreement is a contract for services, not a lease. No agency, employment, partnership or joint venture is intended to be created by this Agreement. Neither Contractor nor County shall take any action or position which is inconsistent with those descriptions of the relationship.

**6.2 Remedies.** Contractor shall not be responsible for failure to provide services as a result of conditions caused by County. **NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CONTRACTOR SHALL NOT BE RESPONSIBLE FOR INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR OTHER SPECIAL DAMAGES THAT COUNTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH**

THIS AGREEMENT OR THE SERVICES PROVIDED BY CONTRACTOR, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.3 Waiver.** No waiver of any provisions of this Agreement or a breach thereof shall be valid or enforceable unless in writing and signed by both parties. The waiver by either party of any breach of any term, covenant, warranty, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained in this Agreement.

**6.4 Governing Law.** This Agreement shall be governed by the law of the state California..

**6.5 Entire Agreement; Agreement.** This Agreement is the parties' entire understanding and supersedes all prior agreements, oral and written, with respect to the subject matter of this Agreement, and no party will be bound by any representation, covenant, term, or condition other than as expressly stated in this Agreement. No statements, promise, or representations have been made by any of the Parties to any other, and no consideration has been offered, promised, expected or held out other than as is expressly provided herein. This Agreement may not be amended except by written agreement signed by both parties to this Agreement. No handwritten changes to this Agreement shall be enforceable unless such changes are initialed by both parties to this Agreement. This Agreement is binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.

**6.6 Third Parties.** Nothing in this Agreement creates, or will be deemed to create, any third party beneficiaries of or under this Agreement.

**6.7 Certain Events.** Neither party will be responsible for any failure or delay in its performance under this Agreement (other than financial obligations including payment of amounts due) if such failure or delay is the result of any: labor dispute; act of God; inability to obtain labor or materials; accident; future law, regulation, ordinance or requirement of any government or regulatory agency; or any other event which is beyond its reasonable control.

**6.8 Confidentiality.** County acknowledges and agrees that this Agreement is highly confidential and proprietary to Contractor and County agrees that neither it, nor any of its employees, contractors, or physicians, shall disclose in any manner the terms, provisions, pricing or any other information contained in this Agreement (or any related proposal) to any third party unless as required by law. Further, County shall ensure that neither it nor any of its employees, contractors, or physicians disclose any of Contractor's policies, procedures, or other confidential information that County or its employees, contractors, physicians receives, except to the extent required by an accreditation organization to which County is subject or a governmental entity.

**6.9 Accreditation.** Contractor and County agree to set standards of care and quality that comply with the Joint Commission. Contractor and County mutually shall cooperate in all phases of applying, scheduling, preparing and executing surveys or inspections by the Joint Commission, as needed. Both parties agree to work cooperatively to implement changes, correct deficiencies or establish policies required and/or recommended by the inspecting agency.

**6.10 Severability.** In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and the application of such provision to other persons or circumstances shall be interpreted so as reasonably to effect the intent of the parties hereto. The parties hereto further agree to use their commercially reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

**6.11 Construction.** Every term and provision of this Agreement is to be construed simply according to its fair meaning and not strictly for or against any party. No provision of this Agreement is to be interpreted as a penalty upon, or a forfeiture by, any party to this Agreement. The parties acknowledge their right to separate legal counsel, and agree to obtain any appropriate advice or opinions about this transaction from their respective counsel. The parties acknowledge that they and their respective legal counsel have had the opportunity to participate equally in the drafting of this Agreement and that in the event of a dispute, no party shall be treated, for any purpose, as the author of this Agreement nor have any ambiguity resolved against it on account thereof.

**6.12 Execution.** By their signatures on the cover page(s) of this Agreement, each of the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf their execution is made. This Agreement constitutes the legal, valid and binding obligation of the parties enforceable in accordance with its terms.

**6.13 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement may be made by facsimile or other electronic transmission. Any such counterpart or signature pages sent by facsimile or other electronic transmission shall be deemed to be written and signed originals for all purposes, and copies of this Agreement containing one or more signature pages that have been delivered by facsimile or other electronic transmission shall constitute enforceable original documents. As used in this Agreement, the term "electronic transmission" means and refers to any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by such a recipient through an automated process.

## **7. TERMINATION**

### **7.1 Termination.**

a) **Material Breach.** Contractor or County may terminate this Agreement if the other party breaches any material covenant, term or provision of this Agreement and the material breach is not cured within sixty (60) days following provision of notice to the breaching party specifying the alleged material breach.

b) **Bankruptcy.** Contractor or County may terminate this Agreement if the other party commits or suffers (voluntarily or involuntarily) an act of bankruptcy, receivership, liquidation or similar event.

**7.2 Termination, Contractor.** Contractor may terminate this Agreement or suspend service if:

a) **Payment Default.** County fails to make any payment to Contractor when due and such failure continues for ten (10) days following notice to County. In the case of any payment default, Contractor may, without notice, cease providing services hereunder after three (3) days following a payment due date should it feel insecure with respect to County's ability or willingness to make payment.

b) **Bankruptcy.** County commits or suffers (voluntarily or involuntarily) an act of bankruptcy, receivership, liquidation or similar event.

**7.3 County's Default.** Upon County's default, Contractor may take any action at law or in equity.

The foregoing remedies are in addition to any provided by law. Neither party shall have obligation to exercise any remedy nor the exercise of the remedy shall not release the parties for any obligation hereunder. All remedies shall be cumulative, and action on one shall not constitute an election or waiver of any other right to which either party may be entitled. In addition, the defaulting party shall pay the other parties reasonable attorney's fees together with an amount equal to all expenses paid or incurred in the enforcement of any rights or privileges hereunder.

**7.4 Termination, County.** County may terminate this Agreement if:

a) **Termination Without Cause.** At any time after the first twenty-four (24) months following the Commencement Date (as defined in the cover page(s) to this Agreement), County may terminate this Agreement, without cause, by providing Contractor with one hundred eighty (180) days prior written notice; provided, however, such notice may not be given prior to the first twenty-four (24) months following the Commencement Date. The termination of this Agreement shall not discharge County from any liability associated with services rendered prior to the termination of this Agreement. County agrees that at the time of termination, all balances owed Contractor must be paid in full.

## **8. Compliance with Laws.**

**8.1 Compliance with Current Laws.** The parties agree that it is their understanding and intent that this Agreement, including any exhibits and other attachments, complies as of the effective date hereof with all applicable federal and state laws and regulations, including, but not limited to, self-referral and anti-kickback laws. Further, the parties

agree that they shall comply with all such laws and regulations, as may be amended from time to time. County represents and warrants that it has not relied on any billing or reimbursement advice that it may have directly or indirectly received from Contractor, and that County has and shall consult with County's own billing and reimbursement experts and attorneys with respect to billing under this Agreement. Further, County warrants and agrees that, throughout the term of this Agreement, County shall comply with all applicable billing laws, regulations and rules, as may be amended from time to time.

**8.2 No Inducement.** This Agreement has been negotiated in good faith through arms length negotiations. Nothing contained in this Agreement, including any compensation paid or payable, is intended or shall be construed: (i) to require, influence or otherwise induce or solicit either party regarding referrals of business, or recommending the ordering of any items or services, of any kind whatsoever to the other party or any of its affiliates, or to any other person, or otherwise generate business between the parties, or (ii) to interfere with a patient's right to choose his or her own health care provider, or with a physician's medical judgment regarding the ordering of any items or services.

**8.3 Changes in Law.** If any change in any applicable federal, state or local government laws, rules or regulations (each, a "Law" and, collectively, "Laws") would render unlawful the conduct under this Agreement of either party hereto, then the parties shall negotiate in good faith to restructure the business arrangement between the parties to conform with the then existing Laws. If the parties have not reached an agreement regarding the material terms of the restructured business arrangement within forty-five (45) days of the change in such Law or by the effective date of such Law, whichever is sooner, then this Agreement may be cancelled by either party upon thirty (30) days' written notice to the other party or upon such effective date, whichever is sooner.

**8.4 No Federal Health Care Program Exclusion.** Each party represents and warrants to the other party that: (i) neither the representing party nor any of its officers, directors, or employees or contractors providing services under this Agreement are currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. Section 1320a-7b(f) (the "Federal health care programs"); (ii) neither the representing party nor any of its officers, directors, or employees or contractors providing services under this Agreement have ever been convicted of a criminal offense related to health care; and (iii) the representing party is not aware of any circumstances which may result in the representing party or any of its officers, directors, or employees or contractors providing services under this Agreement being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term of this Agreement, and each party shall immediately notify the other party of any change in status of the representation and warranty set forth in this Section. In the event a party or any of its officers, directors, or employees or contractors providing services under this Agreement become excluded, debarred, or otherwise ineligible to participate in the Federal health care programs, that party shall be considered in default of this Agreement, and the other

party may immediately terminate this Agreement for cause; provided, however, a party can prevent such termination if that party is not excluded, debarred, or otherwise ineligible to participate in the Federal health care programs and immediately terminates its relationship with any of its officers, directors, or employees or contractors providing services under this Agreement who become excluded, debarred, or otherwise ineligible to participate in the Federal health care programs.



## Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

Contractor will park the current mobile MRI unit or provide a like 1.5T mobile MRI unit with the same capabilities on a full-time basis, staffed Monday through Friday, eight (8) patient-care hours per day or until all exams have been completed each day. For the purpose of this Agreement, "patient-care hours" begin when Contractor personnel are on the Unit and ready to perform a patient scan and end when the last patient scan on the Unit ends.

Monthly fee based on Contractor staffing the unit with one (1) MRI Technologist and one (1) Patient Coordinator, eight (8) patient-care hours per day Monday through Friday will be THIRTY-EIGHT THOUSAND DOLLARS (\$38,000) PER MONTH.

Hourly overtime beyond eight (8) patient-care hours will be charged at THREE HUNDRED FIFTY DOLLARS (\$350).

Holiday Service Fee: An additional daily rate for Contractor-observed holiday: Contractor currently observes the following holidays which may increase from time to time following written notification to SMMC: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas. Holiday fee will be EIGHT HUNDRED DOLLARS (\$800).

No other fees will be charged.

In no event shall the County's total fiscal obligation under this Agreement exceed TWO MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS [\$2,575,000].