

AGREEMENT FOR SERVICES

#756-PHD0508

with

MARSHALL MEDICAL CENTER

regarding

**National Bioterrorism Hospital Preparedness Program
Local Funding Agreement
Fiscal Agent Purchases**

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"); and Marshall Medical Center, a non-profit general acute care hospital operating under the laws of California (hereinafter referred to as "Contractor") whose principal place of business is 1100 Marshall Way, Placerville, CA 95667;

WITNESSETH

WHEREAS, the El Dorado County Public Health Department's Bioterrorism Preparedness Division has successfully applied for, received, and been named as Fiscal Agent for a National Bioterrorism Hospital Preparedness Program Local Funding Grant (hereinafter referred to as the "Hospital Preparedness Grant"); and

WHEREAS, the Hospital Preparedness Grant is for the purpose of funding cooperative agreements for hospital and supporting health care systems to deliver coordinated and effective care to victims of terrorism and other public health emergencies; and

WHEREAS, Contractor has identified needs that fall within the scope and purpose of the Hospital Preparedness Grant to be better prepared for a bioterrorism event or other major medical emergency, and the Hospital Preparedness Grant provides funding to meet those needs; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provisions of such services provided by Contractor are in the public's best interest, are more economically and feasibly performed by outside independent

Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: This funding is provided by a National Bioterrorism Hospital Preparedness Program Local Funding Agreement, and is intended to assist in preparedness for and response to bioterrorism, other outbreaks of infectious disease, and other public health threats and emergencies to deliver coordinated and effective care to victims of terrorism and other public health emergencies. Contractor agrees to use the funding provided by this Agreement to provide the training and the purchase of items listed in Exhibit A. Although the equipment and supplies purchased with these funds will become the property of Contractor, all equipment and supplies purchased with these funds are to be made available for mutual aid, if such a request is made.

ARTICLE II

Term: This Agreement is effective upon full execution by both parties, and shall continue in effect until September 30, 2009 unless cancelled by either party per the stipulations of Articles VIII and IX herein.

ARTICLE III

Compensation for Services: County agrees to pay Contractor \$39,641.00 in advance, following full execution of this Agreement, within 45 days of receipt and approval of an original invoice on Contractor's letterhead referencing this Agreement and the Hospital Preparedness Grant. This payment is to purchase all items noted in Article I, Scope of Services, as provided by the funding grant.

ARTICLE IV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE V

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VI

Assignment and Delegation: Contractor is engaged by County for their unique qualifications and skills as well as those of their personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE VIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

In the event the State or federal government reduces, delays, or eliminates funding needed to carry out activities under this Agreement, in the sole discretion of the County this Agreement may be modified or cancelled in its entirety. Notice of intent to modify or cancel the Agreement pursuant to this paragraph shall be in writing and shall be delivered to Contractor as stated in Article XIII. Such notice shall be sent to Contractor not later than three work days from the County's receipt of notification of the funding reduction, delay, or termination. Contract modification or cancellation pursuant to this paragraph shall become effective on the date the reduction, delay, or elimination of funds is imposed upon the County, or on a later date determined by the County and at the sole discretion of the County.

ARTICLE IX

Default, Termination, and Cancellation:

A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE X

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

EL DORADO COUNTY PUBLIC HEALTH DEPARTMENT
931 SPRING STREET
PLACERVILLE, CA 95667
ATTN: GAYLE ERBE-HAMLIN, DIRECTOR

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

MARSHALL MEDICAL CENTER
1100 MARSHALL WAY
PLACERVILLE, CA 95667
ATTN: CONTRACTS

or to such other location as the Contractor directs.

ARTICLE XI

Indemnity: To the fullest extent of the law, Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly provided by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

ARTICLE XIII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIV

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XV

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVI

Taxpayer Identification / Form W9: All individuals/sole proprietors, corporations, partnerships, associations, organizations or public entities providing services to the County shall provide a fully executed Department of the Treasury Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certification".

ARTICLE XVII

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County, without possessing a County business license, unless exempt under County Code, Section 5.08.070.

ARTICLE XVIII

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XIX

HIPAA: Under this Agreement, Contractor will provide services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to Contractor for the purposes of carrying out its obligations. As a "Covered Entity," Contractor agrees to comply with all the terms and conditions regarding the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

ARTICLE XX

Record Keeping, Reporting and Audit: Contractor shall preserve and make available its records associated with the Hospital Preparedness Grant for a period of three (3) years from the termination of this Agreement. Contractor shall be responsible, to the extent feasible, to report any problems in implementing the provisions of this Agreement to the Administrator or the Hospital Preparedness Grant Coordinator. The Administrator, the Hospital Preparedness Grant Coordinator, or the Grantor of these funds shall have access to any books, documents, and records deemed pertinent to this Agreement. Contractor shall actively participate and cooperate with said persons should an inspection be requested.

ARTICLE XXI

Administrator: The County Officer or employee with responsibility for administering this Agreement is Gayle Erbe-Hamlin, Director of Public Health, or successor.

ARTICLE XXII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXIII

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXIV

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

DEPARTMENT HEAD CONCURRENCE

By: Gayle Erbe-Hamlin
Gayle Erbe-Hamlin, Director
Public Health Department

Date: 5/27/08

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

CONTRACTOR

By: James Whipple
James Whipple, Chief Executive Officer
Marshall Medical Center

Date: 6/5/2008

By: Laurie Eldridge
Laurie Eldridge, Chief Financial Officer
Marshall Medical Center

Date: 6/10/08

COUNTY OF EL DORADO

By: Bonnie H. Rich
Bonnie H. Rich, Purchasing Agent
El Dorado County Chief Administrative Office

Date: 8/15/08

EXHIBIT A

**FY 07-08 HRSA National Bioterrorism Hospital Preparedness Program
Equipment/Supplies/Training Purchases**

MARSHALL MEDICAL CENTER

Item	Quantity	Cost	Sub Total
Med Sled – Patient Evacuation Container	1	\$149.00	\$149.00
Ivent Disaster Preparedness Kit	1	\$10,991.00	\$10,991.00
Roll stand w/ mount. brackets, MRI for Ivent ventilators	1	\$550.00	\$550.00
Support arm, breathing circuit, MRI ventilators	1	\$290.00	\$290.00
Holder, Oxygen Cylinder, MRI	1	\$150.00	\$150.00
Manifold Oxygen Supply, 6 valves	1	\$626.00	\$626.00
Oxymask, Open O2 Del, w/7" tb 25C (1 Case)	1	\$75.00	\$75.00
Diagnostic Testing Services	100	\$15.00	\$1,500.00
Stat 2 gravity flow IV Controllers with tubing	10	\$356.00	\$3,560.00
Med Sled – Patient Evacuation Equipment	10	\$355.00	\$3,550.00
Computer Interface in HCC-Communication	4	\$2,150.00	\$8,600.00
Pharmaceuticals – Levaquin, 100 doses	100	\$9.00	\$900.00
Fax Machine	1	\$1,600.00	\$1,600.00
Safety Coordinator (\$30 an hour * 10 hours)	N/A	\$300.00	\$300.00
Evacuation Training	N/A	\$5,900.00	\$5,900.00
Hospital Management Training for 2 employees	N/A	\$900.00	\$900.00
TOTAL MARSHALL MEDICAL:			\$39,641.00