

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

DEPT: HEALTH SERVICES AGENCY

BOARD AGENDA # *B-9

Urgent Routine

AGENDA DATE March 27, 2001

CEO Concurs with Recommendation YES *ph* NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT: APPROVAL OF AN AGREEMENT WITH MARCONI MEDICAL SYSTEMS FOR SERVICE AND SUPPORT ON C.T. SCANNER FOR A PERIOD OF THREE YEARS

STAFF
RECOMMEN-
DATIONS:

1. APPROVAL OF THE SERVICE SUPPORT AGREEMENT FOR THE AGENCY'S C.T. SCANNER WITH A 36-MONTH TERM, EFFECTIVE JANUARY 21, 2001.
2. AUTHORIZE THE HEALTH SERVICES AGENCY MANAGING DIRECTOR OR HER DESIGNEE TO SIGN AND EXECUTE THE AGREEMENT.

FISCAL

IMPACT: The cost of this Agreement is \$271,800, payable in 36 monthly installments of \$7,550, plus applicable taxes. The cost of this service and support agreement has been included in the Fiscal Year 2000/2001 budget.

BOARD ACTION AS FOLLOWS:

No. 2001-225

On motion of Supervisor Blom, Seconded by Supervisor Mayfield
and approved by the following vote,

Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) Denied

3) Approved as amended

Motion:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

By: *Julie Ferraro Tallman* Deputy

File No.

SUBJECT: APPROVAL OF AN AGREEMENT WITH MARCONI MEDICAL SYSTEMS FOR PREVENTIVE AND CORRECTIVE MAINTENANCE ON C.T. SCANNER FOR A PERIOD OF THREE YEARS

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DISCUSSION: The Marconi C.T. Scanner at the Health Services Agency x-ray department was purchased, installed, and became operational on or about January 21, 2000. In accordance with the original purchase agreement, service and support (preventive maintenance, parts and labor) were only covered during the first year of operation. Service and support in subsequent years would be provided either on a time and materials basis or through a Service and Support Agreement with Marconi.

Considering the mechanical, electronic, and computerized complexity of the equipment, service and support (corrective and preventive maintenance) over the 36-month term of the Agreement could cost considerably more than the price guaranteed in the Service Support Agreement. This Agreement limits the Agency's exposure to unforeseen and catastrophic breakdowns with this equipment. In addition, the Agreement provides for six preventive maintenance service calls per year, replacement parts as required, labor and travel from 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays, for corrective maintenance and repairs as requested.

**POLICY
ISSUE:**

Board approval of this agreement will allow the Agency to provide access to necessary medical services. In so doing, the Board's goal of efficient government operations will be met.

**STAFFING
IMPACTS:**

None.



Service Support Agreement

<u>Customer</u>		<u>Equipment Site</u>	
Customer Number	25552526	Configuration#	217931
	STANISLAUS MEDICAL CENTER		HEALTH SYST. STANISLAUS COMPANY
	P.O. BOX 492		830 SCENIC DRIVE
	MODESTO, CA 95353		MODESTO, CA 95350
		Product	CT MxTwin

Effective Date	Period of Coverage	Current Date	Ref Number
01/21/2001	36 Months	02/05/2001	01B5N2510

Expiring No. W00000403 New Contract No.: new

We will provide certain service, chosen by you, to the equipment specified in Attachment "A" (the "Equipment"), while the Equipment remains at the Equipment site for a period of 36 Months beginning on 01/21/2001 and ending on 01/20/2004 (the "Expiration Date"), in accordance with the terms and conditions of this Agreement.

Service Coverage Includes:

- * Labor and Travel from 8:00 am to 5:00 pm, Monday to Friday, excluding holidays.
- * X-ray tube replacement as required. The rate of adjustment if scan seconds exceed 120,000 per year is \$0.65 per scan second. Maximum chargeable amount is _____. All x-ray tubes removed from customer's equipment shall be the property of Marconi.
- * Replacement parts as required excluding accessories or consumable items.
- * Six Planned Maintenance service calls per year.

Equipment Options:

- * Option coverage on Passport workstation.
- * Option coverage on 100 second continuous spiral.
- * Includes service coverage on RTS Central Imaging Computer.

Other Options/Amendments:

There are no other options or amendments for this agreement.

Payment Terms:

The Agreement Price is \$271,800.00 and is payable in advance in 36 Monthly installments of \$7,550.00 plus applicable taxes. The first installment will be due on the first day of the month in which service coverage begins. One installment will be due on the same day of each consecutive payment period until the agreement amount and all applicable taxes are paid in full.

Services provided are subject to all terms and conditions on the reverse side and include equipment listed on Attachment A.

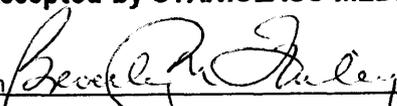
Prices quoted are valid for 60 days pending signed acceptance of this agreement.

You and we have caused this Agreement to be executed by a duly authorized representative of each of us on the date below his/her signature.

Offered by Marconi Medical Systems

Accepted by STANISLAUS MEDICAL CENTER

Sign 
Philip J. Spencer
Zone Service Manager
 Date 4/09/01

Sign 
 Name Beverly M. Finley
 Title Managing Director
 Date 4/4/01

SERVICE SUPPORT AGREEMENT - TERMS AND CONDITIONS

SERVICE

Service will be provided under Service Coverage that may be supplemented with one or more Equipment Options and Other Options/Amendments chosen by you. Service Coverage will be provided during our standard workweek, Monday through Friday excluding our observed holidays, and during our standard work hours, 8:00AM to 5:00PM, unless otherwise specified in the above Service Coverage Section.

Service Coverage will consist of the following:

Planned maintenance service as scheduled by us to include:

A general system inspection and review of system operation, calibrating the system as necessary, system lubrication and filter replacement or cleaning, completing minor operational and reliability field engineering change notices and other remedial maintenance of a non-emergency nature.

Planned maintenance service will be provided at a scheduled time within the Service Coverage hours that is mutually agreed upon at least one week in advance. You agree to give our service personnel full and free access to the Equipment at the scheduled time. Your failure to provide access at the scheduled time will constitute your waiver of the scheduled planned maintenance service and may void Agreement coverage of Equipment malfunctions until such time as planned maintenance service is completed. You agree to pay us at the prevailing demand service rates for all time spent by our service personnel waiting for access to the Equipment.

Repair service, due to Equipment malfunction, as required:

Includes the cost of our replacement parts as required on an exchange (refurbished) or new part basis. Labor to install our replacement parts is included. If provided under the terms of this Agreement, replaced parts become our property and will be promptly removed by us from the Equipment Site. Unless otherwise specified in the Service Coverage Section, the cost of nuclear camera detector crystals and evacuated devices such as x-ray tubes, image intensifier tubes, TV camera pick-up tubes, photo multiplier tubes, and CRTs is excluded. If provided under the terms of this Agreement, replaced crystals and evacuated devices become our property and will be promptly removed by us from the Equipment site.

Travel to perform covered service during the Service Coverage hours set forth above is included.

Subject to the availability of personnel, we will provide, at your request and additional expense, service outside the Service Coverage hours chosen by you. The charge for service rendered during this time will be our standard overtime rate then in effect for service contract customers with this type of Equipment, including round trip travel time. You will be charged a minimum of two hours per call. Other travel expenses and overnight living expenses will be charged at actual cost in accordance with our standards for business expense reimbursement of our employees.

YOUR RESPONSIBILITIES

During the Term of this Agreement, you will do the following:

Assure that the Equipment Site is maintained in a clean and sanitary condition and that the Equipment is cleaned and decontaminated after contact with blood or other potentially infectious material.

Provide necessary housekeeping and cleaning services to maintain the Equipment free from dirt, refuse, contamination or waste of any kind.

Maintain the Equipment Site and environment (including temperature and humidity control, incoming power quality, and fire protection system) in a condition suitable for operation of the Equipment.

Operate the Equipment in accordance with the Operator's Guide including x-ray tube warm-up procedures.

Make normal operator adjustments to the Equipment as specified in the Operator's Guide.

Make the Equipment available without restriction for service in accordance with a mutually acceptable service appointment schedule.

Promptly pay the Agreement Price as set forth above for the Term of this Agreement.

EXCLUSIONS

This Agreement does not cover the following:

Any service to or replacement of components of the Equipment other than those listed in Attachment A.

Any service or parts specifically described as excluded in the Other Options/Amendments Section of this Agreement.

The provision, payment or reimbursement of any rigging, facility or structural cost, or accessory or supply item incident to the provision of Service under this Agreement.

The cleaning or decontamination of the Equipment after contact with blood or other potentially infectious materials, or any Service whatsoever if the Equipment Site or Equipment are so contaminated.

Any service caused by (1) a design, specification or instruction provided by you or your representative; (2) your failure to fulfill your responsibilities under this Agreement; (3) the failure of anyone other than us or our service contractor to comply with our written instructions or recommendations; (4) your combining the Equipment with a product of others or with an incompatible product of ours; (5) any alteration or improper storage, handling, use or maintenance of any part of the Equipment by anyone other than us or our service contractor; (6) anything external to the Equipment, including building, van or trailer, structural deficiency, power surge, fluctuation or failure and air conditioning failure; (7) vandalism, accident, lightning, earthquake, fire, smoke or water damage to the Equipment; (8) any removal or relocation of the Equipment; and (9) anything beyond our reasonable control.

The cost of materials, supplies, parts or labor supplied by any other party.

The cost of consumable materials such as cushions, knee supports, pads, magnetic media, cryogenics (unless included in Equipment Options), film or other supply items, operator or application training or other instruction in the use of the Equipment, unless otherwise specified in the Service Coverage Section.

The cost of factory reconditioning when, in our opinion, it is necessary to have the Equipment or any component of the Equipment rebuilt at the factory because repair or parts replacement by us within the Equipment Site cannot maintain it in satisfactory operating condition.

Any inspection, notification, repair, replacement or other service related to the failure of the Equipment to recognize or accurately and effectively process data and information relating to dates, nor for any delay of error in operation arising as a consequence of the Equipment failing to respond to, recognize or process two-digit year data and information. We do not warrant that the services to be provided under this Agreement will prevent or limit any such failure, delay or error and no such warranty shall be implied into this Agreement.

EXCUSABLE DELAYS

We are not liable for delays in performance due to any cause beyond our reasonable control.

These causes include, without limitation, any delay of sources to supply materials and equipment, government priorities, labor or transportation problems and the Site and/or Equipment being contaminated with blood or other potentially infectious material.

TAXES

You will not be obligated to pay any federal, state or local tax imposed upon or measured by our net income. Any other applicable tax will be invoiced to and payable by you, along with the Agreement Price in accordance with the payment terms set forth in this Agreement, unless we receive a tax exemption certificate from you which is acceptable to the taxing authorities.

DEFAULT

Your default under this Agreement or a default by you or any entity managed or controlled by you or by any principal of yours under any other agreement or contract with us, regardless of when the agreement or contract was entered into, will, at our sole option, if the default is not cured within ten (10) days after written notice of the default, constitute a default of this Agreement and all other agreements and contracts between you and/or such a principal or entity and us. In such an event, we may at our option (1) withhold performance under this Agreement and any or all of the other agreements and contracts until a reasonable time after all defaults have been cured, (2) declare all sums, including but not limited to any Cancellation Charges (as hereinafter defined), to be immediately

collection activities for all sums due or to become due hereunder, including, but not limited to costs and expenses of collection, Cancellation Charges and reasonable attorney's fees, and/or (4) do anything else which the law permits.

WARRANTY DISCLAIMER

Our full contractual service obligations to you are described in this Agreement. There are no warranties provided under this Agreement.

All service and all parts to support service under this Agreement are provided as is. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO ANYTHING PROVIDED BY US OR OUR SERVICE CONTRACTOR.

Our obligations to you under this Agreement end on expiration or termination of this Agreement.

LIMITATIONS OF REMEDIES AND DAMAGES

THE TOTAL LIABILITY OF US AND OUR REPRESENTATIVES TO YOU AND YOUR SOLE AND EXCLUSIVE REMEDY RELATING TO THIS AGREEMENT AND THE SERVICE TO BE PROVIDED UNDER IT IS LIMITED TO THE AGREEMENT PRICE FOR THE SERVICE WHICH IS THE BASIS FOR THE CLAIM.

YOU AGREE THAT WE AND OUR REPRESENTATIVES HAVE NO LIABILITY TO YOU FOR (1) ANY PENAL, INCIDENTAL OR CONSEQUENTIAL OR OTHER SPECIAL DAMAGES SUCH AS LOST PROFIT OR REVENUE, (2) ANY DISTANCE NOT REQUIRED UNDER THIS AGREEMENT, OR (3) ANYTHING OCCURRING AFTER THE END OF THIS AGREEMENT.

You will be barred from any remedy unless you give us prompt written notice of the problem complained of.

This is a commercial service transaction. Any claim related to this Agreement will be covered solely by commercial legal principles. WE, AND OUR REPRESENTATIVES WILL NOT HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER ARISING FROM THIS AGREEMENT. This limitation does not affect claims by third parties for personal injury due to our, our representatives' or your negligence or product liability.

SERVICE MATERIALS

Proprietary Service Materials

In connection with the installation, configuration, maintenance, repair and/or de-installation of the Equipment, we might deliver to the Equipment Site, along with the Equipment or separately, and store at the Equipment Site, attach to or install on the Equipment, and use certain proprietary service materials which have not been purchased by or licensed to you. You hereby consent to this delivery, storage, attachment, installation and use, and to the presence of our locked cabinet or box in the Equipment Site for storage of this property, and to our removal of all or any part of this property at any time, all without charge to us. The presence of this property within the Equipment Site will not give you any right or title to this property or any license or other right to access, use or decompile this property. Any access to or use of this property and any decompilation of this property by anyone other than our personnel is prohibited. You agree that you will use all reasonable efforts to protect this property against damages or loss and to prevent any access to or use or decompilation of this property contrary to this prohibition. You also agree to immediately report to us any violation of this provision known by you.

INDEPENDENT CONTRACTOR

We are your independent contractor. Our employees are under our exclusive direction and control. Our service contractor's employees are under our service contractor's exclusive direction and control. Nothing in this Agreement will be construed to designate us or any of our employees or our service contractors or any of their employees as your employees, agents, joint ventures or partners.

RECORD RETENTION AND ACCESS

If Section 1861 (v) (1) (I) of the Social Security Act applies to this Agreement, Subsections (i) and (ii) of that Section are made a part of this Agreement. In such an event, we agree to retain and make available, and to insert the requisite clause in each applicable subcontract requiring our subcontractor to retain and make available, the contract(s) book(s), document(s), and record(s) to the person(s), upon the request(s) for the period(s) of time required by these Subsections.

SUBCONTRACTS AND ASSIGNMENTS

We may subcontract to service contractors of our choice any of our service obligations to you. No such subcontract will release us from those obligations to you. Any assignment of this Agreement will be void without the other party's prior written consent.

TERM AND TERMINATION

Unless earlier terminated as provided below, this Agreement shall remain in effect for the Term specified on the first page of this Agreement. Without prejudice to any other remedies either party may have, this Agreement may be terminated by either party upon sixty (60) days written notice to the other of a breach or default of any material obligation under this Agreement, provided, however, that the breaching or defaulting party may avoid such termination by curing the claimed breach or default within such sixty (60) day period and has so notified the other party in writing.

In the event the Equipment is replaced by other equipment supplied by us, you may cancel this Agreement without charge by giving sixty (60) days prior written notice to us. You agree we entered into this Agreement on the basis of the Term specified on this first page of this Agreement. In the event of cancellation for any other reason, you must provide ninety (90) days prior written notice of such cancellation and at that time pay us the cancellation charge ("Cancellation Charge") set forth below as liquidated damages. YOU ACKNOWLEDGE THAT OUR DAMAGES IN THE EVENT OF CANCELLATION WOULD BE DIFFICULT TO DETERMINE, AND THAT THE SPECIFIED SUM IS REASONABLE ESTIMATE OF OUR DAMAGES. WE FURTHER AGREE THAT THIS SECTION IS INTENDED TO END AND DO NOT LIQUIDATE THE AMOUNT OF DAMAGES DUE US, AND SHALL BE OUR EXCLUSIVE REMEDY AGAINST YOU, BOTH AT LAW AND IN EQUITY, ARISING FROM OR RELATED TO THE CANCELLATION OF THIS AGREEMENT FOR ANY REASON, EXCEPT AS EXPRESSLY PROVIDED IN THE FIRST SENTENCE OF THIS PARAGRAPH.

Agreement Type	Cancellation Charge
No Glassware Coverage	Thirty-Five Percent (35%) of the remaining unpaid installments of the Agreement Price due under this Agreement.
Glassware Inclusive Coverage*	Forty-Five Percent (45%) of the remaining unpaid installments of the Agreement Price due under this Agreement.

* "Glassware Inclusive Coverage" is defined as Service Coverage that provides for replacement, at any level, Nuclear Camera Crystals or evacuated devices such as x-ray tubes, image intensifier tubes, TV camera pick-up tubes, photo multiplier tubes and CRTs.

Except as otherwise specifically stated in this Agreement, our respective obligations end with the expiration or termination of this Agreement.

SURVIVAL, WAIVER, SEVERABILITY, CHOICE OF LAW

Your obligation to pay any money due us under this Agreement or your obligations under the SERVICE MATERIALS Section shall survive expiration or termination of this Agreement.

All of our rights, privileges and remedies with respect to this Agreement will continue in full force and effect after the end of this Agreement.

Our failure to enforce any provision of this Agreement is not a waiver of that provision or of our right to later enforce each and every provision. If any part of this Agreement is found to be invalid, the remaining part will be effective. The law of the state of Ohio will govern any dispute between us.

ENTIRE AGREEMENT

This Agreement is intended to be the complete and exclusive statement of the terms of this Agreement between us. No prior proposals, statements, course of dealing, course of performance, usage of the trade or industry standards will be part of this Agreement.

This Agreement may be modified only by a writing signed by, one of our

Service Support Agreement Attachment A Equipment List

MxTwin - HEALTH SYST.STANISLAUS COMPANY MODESTO, CA (Configuration: 217931)

Object	Description	Serial#
Mxtwin System 6887-2702	Mxtwin Ct System System	505248
7153-0917	Mxtwin Table	5249
71530206	Beam Limiting	5248
Product Locator Received	Gantry	5248
7159-0101	Product Locator Received	
	Operator Console	5248