

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

between

SANTA BARBARA COUNTY

and

MATRIX MEDICAL CORPORATION

for the period

April 1, 2010 through June 30, 2011

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Matrix Medical Corporation (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein:

WHEREAS, COUNTY owns and operates ambulatory clinics in Lompoc, Santa Maria, Santa Barbara and Carpinteria; and

WHEREAS, COUNTY has an obligation to provide health care access; and

WHEREAS, COUNTY has been experiencing increased and unpredictable needs for obstetrics/gynecology (OB/GYN) appointments in the Santa Maria Women's Health Center and required hospital coverage; and

WHEREAS, COUNTY desires to expand its existing contract with Matrix Medical Corporation to provide clinical services in the Santa Maria Women's Health Center and provide hospital coverage for OB/GYN County patients at the Marian Medical Center; and

WHEREAS, CONTRACTOR's assigned physician, George Johnson, M.D., a California licensed and board certified obstetrician/gynecologist and therefore able to fulfill the obligations of this Agreement; and

WHEREAS, COUNTY and CONTRACTOR understand that this Agreement replaces previous contract number: CN09240.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Dan Reid, Public Health Department Assistant Deputy Director, Primary Care & Family Health Division, at phone number 805.681.5173 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. George Johnson, M.D. at phone number 805.541.0550 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, delivered as follows:

To COUNTY: Dan Reid
Primary Care & Family Health Division
Public Health Department
County of Santa Barbara
300 San Antonio Road
Santa Barbara, CA 93110

To CONTRACTOR: George Johnson, M.D.
Matrix Medical Corporation
1304 Ella Street, Suite A
San Luis Obispo, CA 93401

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACTOR shall commence performance on April 1, 2010 and end performance upon completion, but no later than June 30, 2011 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 **NOTICES.** above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** CONTRACTOR shall perform all of its services under this Agreement as an independent contractor and not as an employee of COUNTY. CONTRACTOR understands and acknowledges that CONTRACTOR shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that CONTRACTOR's assigned physician has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. CONTRACTOR's assigned physician shall be a licensed California physician, board eligible, and a member in good standing of Medical Staff at Marian Medical Center. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY's request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. **TAXES.** COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security),

unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

9. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

10. **RESPONSIBILITIES OF COUNTY.** COUNTY shall provide all information reasonably necessary by CONTRACTOR in performing the services provided herein.

11. **OWNERSHIP OF DOCUMENTS.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this section except after prior written approval of COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

All medical records are the property of the COUNTY. COUNTY has the sole right to possession and custody. Information contained in the medical record belongs to the patient. Medical information will be released when requested, within the boundaries of the law, in accordance with the best interest of the patient.

12. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice.

13. **INDEMNIFICATION AND INSURANCE.** COUNTY shall agree to defend, indemnify and save harmless the CONTRACTOR for services provided pursuant to this agreement to the extent specified in EXHIBIT C. CONTRACTOR shall agree to defend, indemnify and save harmless the COUNTY. COUNTY and CONTRACTOR agree to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

14. **NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

15. **NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires. COUNTY realizes that CONTRACTOR may have other similar independent contractor agreements but CONTRACTOR shall not provide any services at COUNTY facilities for CONTRACTOR's private, non-COUNTY patients.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY. This Agreement is for the services of CONTRACTOR's assigned physician only. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

17. **TERMINATION.**

A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience or because of the failure of CONTRACTOR to fulfill the obligations herein. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services effected (unless the notice directs otherwise), and deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process.

1. For Convenience. COUNTY may terminate this Agreement upon thirty (30) days written notice. Following notice of such termination, CONTRACTOR shall promptly cease work and notify COUNTY as to the status of its performance.

Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

2. For Cause. Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by CONTRACTOR.

B. **By CONTRACTOR.**

1. For Convenience. CONTRACTOR may terminate this Agreement upon ninety (90) days written notice. Following notice of such termination, CONTRACTOR shall promptly cease work and notify COUNTY as to the status of the CONTRACTOR's performance.

2. Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

18. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

19. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

21. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

22. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

23. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

24. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

25. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at his sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

26. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

27. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

28. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

29. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

30. **BUSINESS ASSOCIATE.** The COUNTY is considered to be a "Hybrid Entity" under the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d et seq. and its implementing regulations including but not limited to 45 Code of Federal Regulations parts 142, 160, 162, and 164, ("Privacy and Security Rule"). The CONTRACTOR is considered to be a "Business Associate" under the Privacy Rule. CONTRACTOR must also comply with the Security Rule as a Business Associate, if under this Agreement it receives, maintains or transmits any health information in electronic form in connection with a transaction covered by part 162 of title 45 of the Code of Federal Regulations.

The COUNTY and CONTRACTOR acknowledge that HIPAA mandates them to enter into a business associate agreement in order to safeguard protected health information that may be accessed during the performance of this Agreement. The parties agree to the terms and conditions set forth in EXHIBIT E, HIPAA Business Associate Agreement.

31. **NON-APPROPRIATIONS.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or County governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Matrix Medical Corporation**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective April 1, 2010.

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

COUNTY OF SANTA BARBARA

Chair, Board of Supervisors

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED
TAKASHI WADA, MD, MPH
DIRECTOR/HEALTH OFFICER
PUBLIC HEALTH DEPARTMENT

APPROVED AS TO FORM:
RAY AROMATORIO
RISK PROGRAM ADMINISTRATOR

By: _____
Director

By: _____
Risk Program Administrator

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Matrix Medial Corporation**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective April 1, 2010.

CONTRACTOR

By: _____
Matrix Medical Corporation (George Johnson, M.D.)

Date: _____

EXHIBIT A

STATEMENT OF WORK

I. DESCRIPTION OF SERVICES

CONTRACTOR shall serve as an OB/GYN for and on behalf of the COUNTY, and in this capacity shall provide medical and professional services as required.

A. HOSPITAL CARE AND CONSULTATION shall be defined as:

1. Provide all necessary and required hospital based care for COUNTY patients (admit, discharge, deliveries, surgeries, assists and rounding). CONTRACTOR may utilize the COUNTY's contracted Surgical Nurse, or her agents for all surgeries.
2. Follow up on laboratory results, consultations, radiological or pathology studies.
3. Ensure that copies of hospital records pertinent to patient care for COUNTY patients are provided to the Santa Maria Women's Health Care Center.
4. Provide appropriate consultation to other COUNTY physicians and COUNTY health care practitioners.
5. CONTRACTOR shall submit a copy of the patient's hospital face sheet with the demographic information, diagnosis and proper CPT/ICD codes (using a County issued Superbill) to the Regional Clinic Manager. These documents shall be submitted each Friday.

B. CLINIC CARE shall be defined as:

1. Attend and staff contracted and/or substituted hours at designated COUNTY Health Care Centers (HCC) as scheduled and/or requested.
2. Follow up all laboratory results, consultations and radiologic or pathology studies ordered by CONTRACTOR.
3. Document the patient visit in the medical record.
4. Appropriately complete the Superbill.
5. Review and counter sign charts as required if supervising a health care practitioner.

C. ADMINISTRATIVE DUTIES shall be defined as:

1. Remain current on policies and procedures relative to the practice of CONTRACTOR'S designated specialty.
2. Coordinate with Regional Clinic Manager and/or Supervising Physician in the implementation and review of new policies.
3. Attend medical and/or staff meetings, as requested by the Regional Clinic Manager.

II. CONTRACTOR shall be responsible for continuing medical education (CME) and state license fees. CONTRACTOR may submit Drug Enforcement Agency (DEA) renewal notices to the Primary Care and Family Health Assistant Deputy Director for signature since fees are waived by the DEA for contractors working in the HCC.

EXHIBIT B

COMPENSATION PAYMENT ARRANGEMENTS

1. Hospital Coverage: The COUNTY shall pay CONTRACTOR in the amount of \$1,200 (one thousand two hundred) per 24 hour call day or \$50 per hour for less than 24 hour call day. County shall pay Contractor \$300 per day as an all-inclusive per diem to cover expenses such as lodging, food, cleaning, transportation, etc.
2. Clinic Coverage: The COUNTY shall pay CONTRACTOR in the amount of \$175 per hour. CONTRACTOR shall provide up to approximately 600 hours (8 hours per week) of substitute medical services in the PHD HCCs
3. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount not to exceed \$264,000. \$54,000 for April 1, 2010 through June 30, 2010 and \$210,000 for FY 2010-11.
4. Payment for services and/or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in EXHIBIT A as determined by COUNTY.
5. Monthly, CONTRACTOR shall submit to the Regional Clinic Manager an electronic invoice for the service performed for the period specified. COUNTY shall pay invoices within 30 days following the month services were performed.
6. CONTRACTOR shall not bill patient, Medi-Cal or other health insurance for services which CONTRACTOR bills to COUNTY.
7. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

EXHIBIT C

INDEMINIFICATION AND INSURANCE

INDEMNITY PROVISIONS

Except for insurance coverage provided pursuant to EXHIBIT C, Section 3 below, the CONTRACTOR shall indemnify, defend and hold harmless COUNTY and its officers, employees, and agents against all liabilities, claims, demands, damages and costs (including reasonable attorney's fees and litigation costs) that arise in any way from CONTRACTOR's obligation under this Agreement.

INSURANCE PROVISIONS

- 1) COUNTY shall not be responsible for providing the following insurance for purposes of this Agreement.
 - a) **Workers' Compensation Insurance.** COUNTY will not provide for any Workers' Compensation Insurance to CONTRACTOR.
 - b) **Automobile Liability Insurance.** In limits and amounts as required by the State of California, during the term of this Agreement, CONTRACTOR shall maintain automobile liability insurance that shall cover all owned, non-owned and hired motor vehicles which are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder.
- 2) CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified in Section 1) b) above prior to this Agreement becoming effective. Current certificate(s) of insurance shall be maintained at all times in the office of the designated County representative as a condition precedent to any payment by COUNTY under this Agreement. The approval of insurance shall neither relieve nor decrease the liability of the CONTRACTOR.
- 3) COUNTY agrees to provide CONTRACTOR with Medical Malpractice Insurance for services provided within the scope of this contract. As such, CONTRACTOR agrees to:
 - a) Abide by the terms and conditions of all insurance policies providing coverage to the County of Santa Barbara and actively participate in discussions and planning of any actions against CONTRACTOR. CONTRACTOR agrees to provide consultation;
 - b) Assign to the County of Santa Barbara, any Joint Powers Authority, Indemnifier or Insurance Company providing coverage to the County of Santa Barbara, the sole option of the County of Santa Barbara and/or Insurance Company to settle, if consensus is not reached between COUNTY and CONTRACTOR, without CONTRACTOR's consent.
 - c) Report all events, occurrences, incidents, claims and legal actions, including incidents that occur in CONTRACTOR's private practice, to the Designated Representative of the County of Santa Barbara within 24 hours of receipt of knowledge of such events, occurrence, incident, claim or legal action.
 - d) Report any and all actions taken by any state medical board or other entity against CONTRACTOR's license.

- e) Fully cooperate at all times with the County of Santa Barbara Risk Management Program, the appropriate adjusters/investigators and insurance carriers in the claims administration and/or defense of any claim/legal actions in which CONTRACTOR may be involved or named as a defendant.
- f) Keep the Designated Representative and Risk Management advised of new addresses and or telephone numbers until all claims wherein CONTRACTOR is involved or named as a defendant are fully resolved.
- g) Not to be reimbursed by the County of Santa Barbara or any Insurance Carrier for CONTRACTOR's time spent in the investigation, defense or administration of any legal actions or claims arising from CONTRACTOR's service activities on behalf of the County of Santa Barbara health facilities.
- h) Accept that the coverage provided pursuant to this Agreement is only for services performed on behalf of the County of Santa Barbara at COUNTY facilities (Community Health Clinics or Mental Health Clinics, Detention Health or other health related programs of the COUNTY), or if approved in writing by COUNTY Administration at other facilities on behalf of the COUNTY.

No Medical Malpractice Insurance coverage is provided herein for any of CONTRACTOR's private patient practice activities. Malpractice insurance coverage does extend to CONTRACTOR's activities, under this agreement, for COUNTY patients at the hospital.

CONTRACTOR shall report all COUNTY and non-COUNTY patient contacts/services provided pursuant to this subsection (h). These contacts shall be reported the next business day by either patient billings or some other approved form (e.g., patient "face sheet" for non-billed patients) as approved by the COUNTY Regional Clinic Manager.

CONTRACTOR shall report any and all incidents related to a COUNTY patient. These incidents may include physical injuries or any potential malpractice risk provided pursuant to this subsection (h) on behalf of COUNTY and for private practice.

CONTRACTOR acknowledges that the Medical Malpractice Insurance coverage provided pursuant to this Agreement is automatically cancelled upon termination of this Agreement for any reason.

- i) COUNTY shall continue to indemnify CONTRACTOR after CONTRACTOR's Agreement with COUNTY has ceased, to the extent that a claim is made against CONTRACTOR for an act or omission that occurred while CONTRACTOR was acting within the course and scope of this Agreement with COUNTY.
- j) CONTRACTOR acknowledges the policy and practice of the COUNTY that all claims are reported to the National Practitioner Data Bank when the circumstances and/or outcome meet the reporting requirements under the Health Care Quality Improvement Act, 1986 (42 USC Section 110) including any amendments thereto.

4) Failure to adhere to provisions of the Agreement may result in loss of coverage.

EXHIBIT D

---- INTENTIONALLY OMITTED ----

THIS AGREEMENT DOES NOT INCLUDE EXHIBIT D

EXHIBIT E

HIPAA Business Associate Agreement (Version: July 7, 2009)

1. Use and Disclosure of Protected Health Information

Except as otherwise provided in this Exhibit, the Contractor may use or disclose Protected Health Information ("PHI")¹ to perform functions, activities or services for or on behalf of the County, as specified in the underlying agreement, provided that such use or disclosure does not violate the Health Insurance Portability and Accountability Act (HIPAA), the California Confidential Medical Information Act (CMIA), or other state or federal laws. The uses and disclosures of PHI may not exceed the limitations applicable to the County under the regulations except as authorized for management, administrative or legal responsibilities of the Contractor. PHI includes without limitation "Electronic Protected Health Information" ("EPHI")².

2. Business Associates Held to the Same Standards as Covered Entities

The Business Associate/Contractor understands that HIPAA and CMIA hold the Business Associate to the same standards of responsibility and liability for the protection of confidential medical information as those required of the Covered Entity.

3. Applicable Laws

Laws which will apply to the Business Associate, include, but are not limited to: the Health Insurance Portability and Accountability Act (HIPAA), a federal law; the California Confidential Medical Information Act (CMIA), a state law; other federal and state laws pertaining to the protection of patient/client privacy and the security of confidential medical information.

4. Requirement to Train Own Employees and Workforce

The Contractor has a responsibility to provide effective training for all members of its workforce (including its own employees, management, staff, volunteers, independent contractors, and subcontractors) who will or who are likely to have any access to or exposure to PHI or EPHI. Members of the Contractor's workforce, who use, disclose, handle, view, process, distribute, access, audit, create, receive or have any exposure to PHI or EPHI must receive training on both the HIPAA Privacy Rule and the HIPAA Security Rule. Privacy Rule Training shall meet the requirements of 45 Code of Federal Regulations Section 164.530 (b). Security Rule Training shall meet the requirements of 45 Code of Federal Regulations Section 164.308 (a)(5).

5. Further Disclosure of PHI

The Contractor shall not use or further disclose PHI other than as permitted or required by the underlying Agreement, or as required by law.

¹ "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

² "Electronic Protected Health Information" means Protected Health Information, which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

6. Safeguarding PHI

The Contractor shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the underlying Agreement. Contractor shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI that Contractor creates, receives, maintains or transmits on behalf of County.

The actions taken by the Contractor to safeguard EPHI shall include, but may not be limited to:

- a. Encrypting EPHI that it stores and transmits;
- b. Implementing strong access controls, including physical locks, firewalls, and strong passwords;
- c. Using antivirus/antispyware software that is upgraded regularly;
- d. Adopting contingency planning policies and procedures, including data backup and disaster recovery plans; and
- e. Conducting periodic privacy and security training.

7. Unauthorized Use or Disclosure of PHI

The Contractor shall report to the County any use or disclosure of the PHI not provided for by the underlying Agreement or otherwise in violation of the HIPAA Privacy Rule, the HIPAA Security Rule, or CMIA. Contractor shall report to County any privacy or security incidents within 2 days of becoming aware of such incidents. For purposes of this paragraph, "security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. The Business Associate shall also be compliant with all HIPAA and CMIA reporting requirements (to federal or state authorities) pertaining to any privacy or security breaches of confidential medical information.

8. Agents and Subcontractors of the Business Associate

The Contractor shall ensure that any agent, including a subcontractor, to which the Contractor provides PHI received from, or created or received by the Contractor on behalf of the County, shall comply with the same restrictions and conditions that apply through the underlying Agreement to the Contractor with respect to such information. The Contractor shall ensure that any agent to whom it provides PHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such PHI. Contractor shall not use subcontractors or agents, unless it receives prior written consent from County.

9. Access to PHI

At the request of the County, and in the time and manner designated by the County, the Contractor shall provide access to PHI in a Designated Record Set to an Individual or the County to meet the requirements of 45 Code of Federal Regulations Section 164.524.

10. Amendments to Designated Record Sets

The Contractor shall make any amendment(s) to PHI in a Designated Record Set that the County directs or at the request of the Individual, and in the time and manner designated by the County in accordance with 45 Code of Federal Regulations Section 164.526.

11. Documentation of Uses and Disclosures

The Contractor shall document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 Code of Federal Regulations Section 164.528. Contractor agrees to implement a process that allows for an accounting to be collected and maintained by Contractor and its agents or subcontractors for at least six years prior to the request, but not before the compliance date of the Privacy Rule.

12. Accounting of Disclosures

The Contractor shall provide to the County or an Individual, in the time and manner designated by the County, information collected in accordance with 45 Code of Federal Regulations Section 164.528, to permit the County to respond to a request by the Individual for an accounting of disclosures of PHI in accordance with 45 Code of Federal Regulations Section 164.528.

13. Records Available to Covered Entity and Secretary

The Contractor shall make available records related to the use, disclosure, security and privacy protection of PHI received from the County, or created or received by the Contractor on behalf of the County, to the County or to the Secretary of the United State Department of Health and Human Services for purposes of investigating or auditing the County's compliance with the HIPAA privacy and security regulations, in the time and manner designated by the County or the Secretary.

14. Destruction of PHI

- a. Upon termination of the underlying Agreement for any reason, the Contractor shall:
 - (1) Return all PHI received from the County, or created or received by the Contractor on behalf of the County required to be retained by the Privacy Rule; or
 - (2) Return or destroy all other PHI received from the County, or created or received by the Contractor on behalf of the County.

This provision also shall apply to PHI in possession of subcontractors or agents of the Contractor. The Contractor, its agents or subcontractors shall retain no copies of the PHI. However, Contractor, its agents or subcontractors shall retain all protected information throughout the term of the underlying Agreement and shall continue to maintain the information required under Section 11 of this Exhibit for a period of six years after termination of the underlying Agreement.

- b. In the event the Contractor determines that returning or destroying the PHI is not feasible, the Contractor shall provide the County notification of the conditions that make return or destruction not feasible. If the County agrees that the return of the PHI is not feasible, the Contractor shall extend the protections of this Exhibit to such PHI and limit further use and disclosures of such PHI for so long as the Contractor, or any of its agents or subcontractors, maintains such PHI.

15. Amendments

The Parties agree to take such action as is necessary to amend the underlying Agreement as necessary for the County to comply with the requirements of the Privacy Rule and its implementing regulations.

16. Mitigation of Disallowed Uses and Disclosures

The Contractor shall mitigate, to the extent practical, any harmful effect that is known to the Contractor of a use, disclosure or exposure of PHI by the Contractor in violation of the requirements of the underlying Agreement or of the HIPAA Privacy and Security Rules or CMIA.

17. Termination of Agreement

The County shall terminate the underlying Agreement upon knowledge of a material breach by the Contractor of which the Contractor fails to cure.

18. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those in the HIPAA Privacy Rule, the HIPAA Security Rule and CMIA.

19. Interpretation

Any ambiguity in this Exhibit shall be resolved to permit County to comply with the HIPAA Privacy Rule, the HIPAA Security Rule and CMIA.

Contract Summary Form:

Contract Number: _____-_____-_____-_____-_____

D1. Fiscal Year: FYs 2009-10, 2010-11
D2. Budget Unit Number (*plus -Ship/-Bill codes in paren's*):
D3. Requisition Number:
D4. Department Name: Public Health
D5. Contact Person: Dan Reid
D6. Phone: 805.681.5173

K1. Contract Type (*check one*): ☐ Personal Service ☐ Capital Project/Construction

K2. Brief Summary of Contract Description/Purpose :

K3. Original Contract Amount: \$264,000

K4. Contract Begin Date.....: April 1, 2010

K5. Original Contract End Date: June 30, 2011

K6. Amendment History (*leave blank if no prior amendments*):

<u>Seq#</u>	<u>EffectiveDate</u>	<u>ThisAmndt</u>	<u>AmtCum</u>	<u>AmndtTo</u>	<u>DateNew</u>	<u>TotalAmt</u>	<u>NewEnd</u>	<u>Date</u>	<u>Purpose (2-4 words)</u>
			\$	\$		\$			

K7. Department Project Number:

B1. Is this a Board Contract? (*Yes/No*).....: Yes

B2. Number of Workers Displaced (*if any*).....: none

B3. Number of Competitive Bids (*if any*): n/a

B4. Lowest Bid Amount (*if bid*): \$

B5. If Board waived bids, show Agenda Date:

B6. ... and Agenda Item Number: #

B7. Boilerplate Contract Text Unaffected? (*Yes / or cite ¶¶*) Exhibit C

F1. Encumbrance Transaction Code: 1701

F2. Current Year Encumbrance Amount: \$54,000 for FY 09-10

F3. Fund Number.....: 0001

F4. Department Number.....: 041

F5. Division Number (*if applicable*).....: 3001

F6. Account Number: 7467

F7. Cost Center number (*if applicable*).....:

F8. Payment Terms.....: Net 30

V1. Vendor Numbers (*A=uditor; P=urchasing*):

V2. Payee/Contractor Name: Matrix Medical Corporation (George Johnson, M.D.)

V3. Mailing Address: 1304 Ella Street, Suite A

V4. City State (*two-letter*) Zip (*include +4 if known*) : San Luis Obispo, CA 93041

V5. Telephone Number.....: 805-541-1621

V6. Contractor's Federal Tax ID Number (*EIN or SSN*)

V7. Contact Person.....: George Johnson, M.D.

V8. Workers Comp Insurance Expiration Date.....: n/a. Proof of auto insurance on file.

V9. Liability Insurance Expiration Date[s] (*G=enl; P=rofl*) n/a. County provides Medical Malpractice coverage:

V10. Professional License Number: #

V11. Verified by (*name of County staff*): Jaclyn Smith

V12. Company Type (*Check one*): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☒ Corporation

I certify: information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date: _____ Authorized Signature: _____