

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

between

SANTA BARBARA COUNTY

and

CAROLYN GRIFFITH, M.D.

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 Carolyn Griffith, M.D. (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 is mandated to serve as the safety net Provider for inpatient and outpatient obstetrical and gynecological services; and

WHEREAS, COUNTY desires to contract with Carolyn, Griffith, M.D., a California licensed Physician with expertise/specialty in Obstetrics and Gynecology (OB/GYN) to provide OB/GYN services in the Santa Maria Women's Center clinic, hospital OB/GYN services and hospital call; and

WHEREAS, COUNTY and CONTRACTOR understand that this is a new Agreement that replaces all previous agreements and amendments;

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

1. **DESIGNATED REPRESENTATIVE.** Elizabeth Snyder, Public Health Department Assistant Deputy Director, Primary Care & Family Health Division, at phone number 805.681.5252 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Carolyn Griffith, M.D., at phone number 805.563.2973 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: Elizabeth Snyder
Primary Care & Family Health Division
Public Health Department
County of Santa Barbara
300 San Antonio Road
Santa Barbara, CA 93110

To CONTRACTOR: Carolyn Griffith, M.D.
1626 Payeras
Santa Barbara, CA 93109

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 January 1, 2009 and end performance upon completion, but no later than June 30, 2010 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 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. 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.

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. 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 facility for CONTRACTOR's private, non-COUNTY patients.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of CONTRACTOR's rights nor transfer any of its obligations under this Agreement.

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 ninety (90) 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. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision

of COUNTY shall be final. 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 CONTRACTOR's 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.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective January 1, 2009.

COUNTY OF SANTA BARBARA

ATTEST
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

Chair, Board of Supervisors
Salud Carbajal

Date: _____

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:
ELLIOT SCHULMAN, MD, MPH
DIRECTOR AND HEALTH OFFICER.
PUBLIC HEALTH DEPARTMENT

APPROVED AS TO INSURANCE FORM:
RAY AROMATORIO, ARM, AIC
RISK PROGRAM ADMINISTRATOR

By: _____
Director

By: _____
Risk Program Administrator

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Carolyn Griffith, M.D.**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective January 1, 2009.

CONTRACTOR

BY: _____
CAROLYN GRIFFITH, M.D.

DATE: _____

EXHIBIT A

STATEMENT OF WORK

The County of Santa Barbara, a political subdivision of the State of California, ("COUNTY") and "CONTRACTOR" agree as follows:

1) DEFINITIONS

- a) "COUNTY obstetrical (hereafter OB) patients" shall be defined as patients who are registered in the COUNTY obstetrical program for their current pregnancy.
- b) "COUNTY gynecology (hereafter GYN) patients" shall be defined as patients who are registered and treated at the Public Health Clinic within the past twelve (12) months.
- c) "Emergency medical condition" shall be as defined in Federal Statute 42 USC Section 1396b(v), as such statute may be amended from time to time, as follows:
 - "A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such as that the absence of immediate medical attention could reasonably be expected to result in:
 - Placing the patient's health in serious jeopardy; or
 - Serious impairment to bodily functions; or
 - Serious dysfunction of any bodily organ or part."

2) MEDICAL SERVICES

CONTRACTOR agrees to provide the following services to County:

a) Santa Maria Women's Clinic Care:

Approximately 3 (eight-hour) OB and/or GYN clinics per week, with an estimated total of 46 weeks per calendar year as mutually agreed with the Regional Clinic Manager.

b) Hospital Care at Marian Medical Center:

i) Admit, monitor, and discharge COUNTY OB/GYN patients, as required including:

- (1) Normal deliveries;
- (2) Cesarean sections'
- (3) Emergency and non-emergency gynecological procedures'
- (4) Order necessary and required hospital based tests for COUNTY OB/GYN patients as may be required at Marian Medical Center;
- (5) Follow-up all laboratory results, consultations, radiology procedures or pathology studies;
- (6) Ensure that copies of hospital records pertinent to patient care for COUNTY OB/GYN patients are provided to the Public Health Clinic - Medical Records Unit.

c) Hospital Emergency Call (as mutually agreed and scheduled):

- i) CONTRACTOR shall take approximately 7 (seven) days of call each month and shall act as the admitting physician for COUNTY OB/GYN patients at Marian Medical Center.
- ii) Provide hospital emergency room consultation and care for COUNTY OB/GYN patients and other non-County patients (unassigned patients) as may be required by Marian Medical Center to retain hospital privileges.
- iii) Provide appropriate consultation to other COUNTY providers.

d) Lompoc Clinic Care: At the request of the Regional Clinic Manager, CONTRACTOR agrees to cover the OB and/or GYN clinics at the Lompoc Clinic as a substitute physician.

3) **ADMINISTRATIVE REQUIREMENTS:**

- a) Adhere to the American College of Obstetricians and Gynecologists (ACOG) standards for Obstetrics and Gynecology care.
 - b) Adhere to the Santa Barbara COUNTY Public Health Department Antepartum Protocols for these specific conditions: tuberculosis, enteric pathogens and parasitic infections and diabetes.
 - c) Adhere to the Santa Barbara COUNTY Public Health Department Policies and Procedures for timely reporting of communicable disease.
 - d) Adhere to the Policies and Procedures relative to the practice of Obstetrics and Gynecology at Marian Medical Center.
 - e) Coordinate with other physicians and providers as designated by COUNTY in the implementation and review of protocols, policies and procedures above.
 - f) Actively participate in peer review and other quality improvement activities as noted in the protocols, policies and procedures above.
 - g) Report to the Designated Representative or the Regional Clinic Manager any issues affecting the Santa Maria Region's OB/GYN Program.
 - h) CONTRACTOR shall, on an ongoing basis, or as agreed to by COUNTY, submit patient information on any deliveries and gynecology surgeries performed.
 - i) Submit hospital and clinic service Superbills by the close of business each week.
- 4) **SUBSTITUTION:** This Agreement is for the services of CONTRACTOR only. CONTRACTOR may not substitute another provider for his/her services.
- 5) **HOSPITAL PRIVILEGES:** During this contract period, CONTRACTOR shall pay and be responsible for maintaining CONTRACTOR's hospital privileges at Marian Medical Center.
- 6) **CONTRACTOR** shall be responsible for their own continuing medical education (CME) and state license fees. CONTRACTOR may submit their Drug Enforcement Agency (DEA) renewal notice to the Primary Care Family Health Assistant Deputy Director for signature since fees are waived by the DEA for those contractors working in the clinic.
- 7) **CONTRACTOR** shall comply with any written COUNTY policy on the subject of conflict of interest.
- 8) **MEDICAL RECORDS:** Medical records are the property of the COUNTY which has the right to possession and custody. The 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.
- 9) **RECURRING PERFORMANCE MEASURES (RPMs):** CONTRACTOR has agreed to practice effective and high quality medicine. Therefore, CONTRACTOR agrees to work with the COUNTY to meet contemporary quality measurements and indicators of outcomes, which can be monitored and reported. Such measures will be defined and agreed by the CONTRACTOR and COUNTY.

EXHIBIT B

COMPENSATION PAYMENT ARRANGEMENTS

The COUNTY will reimburse CONTRACTOR for all services provided to COUNTY as outlined in Exhibit A.

1. **COMPENSATION.** COUNTY shall pay CONTRACTOR for all deliveries, surgeries, patient visits, hospital on-call duties and any other services normally associated with CONTRACTOR's profession and specialty as part of the monthly rate addressed herein.
2. For services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount not to exceed \$393,485 for services provided from January 1, 2009 through June 30, 2010.
3. 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.
4. CONTRACTOR shall monthly submit to the Regional Clinic Manager an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Contract Number. The Regional Clinic Manager shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 20 days following the month services were performed. The monthly claim submitted by CONTRACTOR shall be itemized as follows:

Monthly base amount: For the period of January 1, 2009 through June 30, 2010 CONTRACTOR shall be paid a monthly amount of \$19,027.

Extra Hospital Call: For the period January 1-June 30, 2009, an amount not to exceed \$10,000 is available to compensate CONTRACTOR if COUNTY requests additional days of Hospital Call. For the period July 1, 2009-June 30, 2010 an amount not to exceed \$20,000 will be available. Reimbursement for the extra call services shall be at a daily rate (24 hours) of \$1,200.00 (one thousand two hundred dollars) or (fifty dollars per hour). No additional compensation shall be made for delivery/gynecology services during normal clinic hours or during days or evenings where CONTRACTOR would have normally been on-call. CONTRACTOR will provide proper documentation of such call on the invoice. If these extra services are not performed, CONTRACTOR shall not receive this money. The decision to pay CONTRACTOR for additional on-call services shall rest solely with the COUNTY.

Lompoc Public Health Clinic: COUNTY agrees to pay CONTRACTOR \$ 125.000 per hour to provide substitute OB or GYN clinic services at the request of the Regional Clinic Manager.

Contract Improvement Performance Incentive: CONTRACTOR may be paid up to a total amount of \$18,000 over two performance periods if CONTRACTOR achieves the Recurring Performance Measures established in Section 9 of Exhibit A of this Agreement. For the first period of January 1 through January 30, 2009, CONTRACTOR may be paid an amount not to exceed \$6,000, with any payment to be made to CONTRACTOR by August 15, 2009. For the second period of July 1, 2009 through June 30, 2010, Contractor may be paid an amount not to exceed \$12,000, with any payment to be made to CONTRACTOR by August 15, 2010. Payments shall be paid to CONTRACTOR only if

they work the complete period. In no case shall any changes to the compensation model be made that causes the reimbursement to exceed the total compensation identified in Exhibit B, Section 2, above.

5. BILLING. CONTRACTOR shall not bill patient, Medi-Cal or other health insurance for services which CONTRACTOR bills to the COUNTY.
6. 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

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;
 - 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 without CONTRACTOR's consent any claim or legal action involving the legal limits of coverage provided;
 - 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 adjustors/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 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), Marian Medical Center, Santa Maria Ambulatory Surgery Center, or if approved in writing by COUNTY Administration at other facilities on behalf of the County. This coverage includes hospital emergency room consultation and care of non-County patients as may be required by Marian Medical Center to retain hospital privileges.

No Medical Malpractice Insurance coverage is provided herein for any activities performed at any other institution, agency, office, or hospital or for CONTRACTOR's private patient practice.

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 Clinic Manager.

CONTRACTOR shall report any and all incidents related to a 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; and
- 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

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 HIPAA or other law. 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. Requirement to Train Own Employees

The Contractor has a responsibility to provide effective training for all members of its workforce (including its own employees, management, staff, volunteers and independent contractors) 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).

3. 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.

4. 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 software that is upgraded regularly;
- d. Adopting contingency planning policies and procedures, including data backup and disaster recovery plans; and
- e. Conducting periodic security training.

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.

5. 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 Privacy Rule or Security Rule. Contractor shall report to County any security incidents within 10 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 9 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.

13. 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.

14. Mitigation of Disallowed Uses and Disclosures

The Contractor shall mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of the underlying Agreement or the Privacy Rule.

15. 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.

16. Definitions

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

17. Interpretation

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