

SERVICES AGREEMENT
between
COUNTY OF SANTA BARBARA
and
SANTA BARBARA COTTAGE HOSPITAL
and
ST. FRANCIS FOUNDATION
for
LIBERTY PROGRAM (TATTOO REMOVAL)

For the Period July 1, 2011 through June 30, 2013

THIS SERVICES AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY), Santa Barbara Cottage Hospital, a California nonprofit public benefit corporation, having its principal place of business at Pueblo and Bath Streets, Santa Barbara, California 93105 (hereafter HOSPITAL) on behalf of the Liberty (Tattoo Removal) Program, and St. Francis Foundation (hereafter FOUNDATION), a California nonprofit public benefit corporation, having its principal place of business at 2323 De la Vina Street, Santa Barbara, California 93105 wherein COUNTY agrees to provide and HOSPITAL and FOUNDATION agree to compensate for services specified herein.

WHEREAS, COUNTY and HOSPITAL wish to continue a Public/Private partnership that benefits both parties and the community by establishing an agreement to re-locate the HOSPITAL's Liberty Program to the COUNTY's Public Health Department within its Santa Barbara Health Care Center; and

WHEREAS, the Liberty Program was developed in 1993 as a means to support teens and adults who want to start a new life, free of crime and gang involvement, through the removal of tattoos to assist these individuals "re-enter" mainstream society, improve their appearance and interpersonal relationships, and increase employment opportunities and academic achievement; and

WHEREAS, FOUNDATION has provided financial and administrative support for the Liberty Program for many years and wishes to continue in that role and enter into this new agreement; and

WHEREAS, the community will continue to benefit from this historical partnership between HOSPITAL and FOUNDATION with COUNTY's active participation.

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

1. **DESIGNATED REPRESENTATIVE.** Elizabeth Snyder at phone number (805) 681-5252 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Steven Fellows, at phone number (805) 569-7290 is the authorized representative for HOSPITAL. Debbie

Cloud, at phone number (805) 563-4702 is the authorized representative of FOUNDATION. 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, as follows:

- To COUNTY: Elizabeth Snyder, Deputy Director for Primary Care & Family Health
Public Health Department
300 North San Antonio Road
Santa Barbara, CA 93101
- To HOSPITAL: Steven Fellows, Executive Vice President & Chief Operating Officer
Cottage Health System
P.O. Box 689
Santa Barbara, CA 93102-0689
- To FOUNDATION: Debbie Cloud, Executive Director
St. Francis Foundation of Santa Barbara
2323 De La Vina Street, Suite 104
Santa Barbara, CA 93105-3878

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. **ASSIGNMENT OF EQUIPMENT AND SERVICE CONTRACT.** HOSPITAL agrees to loan to COUNTY its clinical laser equipment for tattoo removal and assign a two year, prepaid, maintenance agreement for such equipment, subject to the provisions of Exhibit A.

4. **SCOPE OF SERVICES.** COUNTY agrees to provide the services in accordance with Exhibit A attached hereto and incorporated herein by reference (hereinafter "Services").

5. **TERM.** COUNTY shall commence performance on July 1, 2011 and shall continue in full force and effect for two (2) years, terminating on June 30, 2013.

6. **COMPENSATION OF COUNTY.** HOSPITAL and FOUNDATION shall pay COUNTY in accordance with the terms set forth in Exhibit B of this Agreement for services provided by COUNTY regarding the Liberty Program.

7. **INDEPENDENT CONTRACTOR.** The parties hereto, in the performance of this Agreement, will be acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. HOSPITAL and FOUNDATION understand and acknowledge that they 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.

8. **CONFLICT OF INTEREST.** HOSPITAL covenants that it 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. HOSPITAL further covenants that in the performance of this Agreement, no person having any such interest shall be employed by HOSPITAL.

9. **INDEMNIFICATION AND INSURANCE.** COUNTY agrees to defend, indemnify, and hold harmless HOSPITAL and FOUNDATION, and their employees against any claim, lawsuit or judgment arising out of a COUNTY employee providing Services in any of COUNTY's clinics as contemplated by this Agreement.

COUNTY and HOSPITAL shall each carry professional liability insurance in an amount not less than \$1 million per occurrence and \$3 million aggregate, or provide and maintain a self-insurance program funded to meet these minimum limits. Insurance is against professional errors and omissions (malpractice) in providing services under the terms of this Agreement and for the protection of the interests and property of COUNTY and HOSPITAL and their respective employees and agents.

10. **NONDISCRIMINATION.** COUNTY hereby notifies HOSPITAL and FOUNDATION 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 HOSPITAL and FOUNDATION agree to comply with said ordinance.

11. **NONEXCLUSIVE AGREEMENT.** HOSPITAL and FOUNDATION understand 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 HOSPITAL and/or FOUNDATION, as the COUNTY desires.

12. **ASSIGNMENT.** Neither HOSPITAL, FOUNDATION nor COUNTY shall assign any of their respective rights nor transfer any of their respective obligations under this Agreement without the prior written consent of the other party and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

13. **TERMINATION.**

For Convenience. COUNTY or FOUNDATION or HOSPITAL may, by written notice to each other, terminate this Agreement in whole or in part at any time with ninety (90) days notice without cause. Upon termination, each party shall immediately discontinue all services effected (unless the notice directs otherwise), and deliver to each other all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by the other party in performing this Agreement, whether completed or in process, excepting medical records. Each party shall maintain possession of medical records produced in their respective facilities.

In the event that COUNTY cannot continue providing the Liberty Program, COUNTY agrees to transfer the Liberty Program, the equipment and any term remaining on the maintenance agreement back to HOSPITAL. However, COUNTY acknowledges that it does not have the authority to donate, transfer, close or reassign the Liberty Program to another organization, within or outside of COUNTY, without the express written permission of HOSPITAL whose approval shall be at its sole discretion.

For Cause. In the event of a material breach of this Agreement, any party may initiate termination of the Agreement. The aggrieved party shall serve the other parties with a thirty (30) day

notice to cure the breach. The notice must specify in detail the nature of the alleged material breach, including the supporting factual basis and any relevant documentation. A material breach by HOSPITAL and/or FOUNDATION may include, but is not limited to HOSPITAL's and/or FOUNDATION's failure to pay its monetary commitments as described in Section 6 (Compensation) on the prescribed date after receiving an invoice from COUNTY.

The party or parties receiving the notice shall have ten (10) days from the date of receipt to respond to the alleged breach by either requesting in writing a meeting with the noticing party, curing the breach, or if the breach is of such a nature that it cannot be reasonably cured within thirty (30) days, commence curing the breach within said period and notifying the other party of the actions taken. If a meeting is requested by the party or parties receiving the notice, it shall be scheduled within ten (10) days of the date notice is received. If corrective action is not taken by the party or parties receiving notice, or the parties do not reach an agreement during the notice period, this Agreement shall terminate upon completion of the thirty (30) days notice period at the option of the noticing party or parties, notwithstanding any other provision of this Agreement.

14. **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.

15. **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.

16. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY, HOSPITAL or FOUNDATION 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.

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

18. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY, HOSPITAL or FOUNDATION 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 or HOSPITAL shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY or HOSPITAL, as the case may be.

19. **ENTIRE 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 agreement, course of conduct, waiver or estoppel.

20. **SUCCESSORS AND ASSIGNS.** Subject to Section 15, 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.

21. **COMPLIANCE WITH LAW.** COUNTY shall, at its 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 COUNTY in any action or proceeding against COUNTY, whether HOSPITAL and/or FOUNDATION be a party or parties thereto or not, that COUNTY has violated any such ordinance or statute, shall be conclusive of that fact as between COUNTY, HOSPITAL and/or FOUNDATION.

22. **CALIFORNIA LAW.** The laws of the State of California shall govern this Agreement. 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.

23. **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.

24. **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, HOSPITAL hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which HOSPITAL is obligated, which breach would have a material effect hereon.

25. **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.

26. **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 HOSPITAL is considered to be a "Business Associate" under the Privacy Rule. HOSPITAL 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 HOSPITAL 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 D - HIPAA Business Associate Agreement.

27. **NON-APPROPRIATIONS.** In the event that funds are not appropriated, budgeted, or otherwise made available in the consecutive years of this Agreement, then COUNTY shall immediately notify HOSPITAL and FOUNDATION of such occurrence and the Agreement may be terminated by COUNTY. Subsequent to the termination of this Agreement under this provision, COUNTY shall have no

obligation to make payments with regard to the remainder of the term and HOSPITAL and FOUNDATION shall have no obligation to provide services under this Agreement.

28. **MEET AND CONFER.** COUNTY, HOSPITAL and FOUNDATION agree to meet and confer no less than two (2) times per year (December and April) during the term of this Agreement to discuss matters of mutual interest and/or concern as a means of assuring effective communication between the parties for the benefit of the community being served under the terms of the Agreement.

Signature Pages Follow

Agreement for Services between **County of Santa Barbara, Santa Barbara Cottage Hospital, and St. Francis Foundation.**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on July 1, 2011.

COUNTY OF SANTA BARBARA

ATTEST:
CHANDRA L. WALLAR
CLERK OF THE BOARD

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 MANAGER

By: _____
Director

By: _____
Risk Manager

Agreement for Services between the **County of Santa Barbara, Santa Barbara Cottage Hospital, and St. Francis Foundation**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on July 1, 2011.

SANTA BARBARA COTTAGE HOSPITAL

By: _____
Steven A. Fellows, Executive Vice President & COO
Tax ID Number: 95-1644629

Date _____

Agreement for Services between the **County of Santa Barbara, Santa Barbara Cottage Hospital, and St. Francis Foundation**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on July 1, 2011.

ST. FRANCIS FOUNDATION

By: _____

Debbie Cloud, Executive Director

Tax ID Number: XX-XXXXXXX

Date _____

EXHIBIT A

STATEMENT OF WORK

This three-way Agreement has been developed in order to: 1) transfer the Liberty Program from HOSPITAL to COUNTY; 2) to describe the past and future role of FOUNDATION; and 3) to describe the role of HOSPITAL.

The Liberty Program was developed years ago by St. Francis Medical Center and upon that hospital's closure, the Liberty Program was transferred to HOSPITAL. FOUNDATION has supported the Liberty Program during its years of operation, but in the next two years the FOUNDATION will cease its financial contributions to the Liberty Program. FOUNDATION and HOSPITAL staff sit on the Liberty Program Advisory Board. FOUNDATION and HOSPITAL agreed that it would be in the Liberty Program's best interests to reach out to the COUNTY as a means of maintaining the Liberty Program. .

HOSPITAL will provide the following to COUNTY:

1. Laser equipment and all its tools, parts and supplies, instruction guides and maintenance contract.
2. Trained personnel who can instruct COUNTY staff on how to properly utilize laser equipment.
3. A list of licensed trained personnel who may be interested in contracting with COUNTY to provide the tattoo removal procedures.
4. An electronic copy of the Policy & Procedures for the equipment and Liberty Program.
5. A complete packet for all current and pending patients who are in the midst of care and for those who have requested services.
6. A list of the Liberty Program Advisory Board members.

COUNTY will provide the following:

1. Tattoo removal services for individuals who have met the requirements established by the Liberty Program Advisory Board and the COUNTY.
2. Determine eligibility for participation in the Liberty Program and provide case management of patients receiving services.
3. Support and adhere to the Liberty Program's rules, policies and practices with respect to accepting referrals, the application process, and patient requirements for mandatory volunteer time of 10 hours of volunteer work in a COUNTY facility or program for every laser removal session.
4. Support the work of the Liberty Program Advisory Board's efforts to require community service in exchange for laser removal services, and have a COUNTY Health Care Center Administrator join the Board as a voting member.
5. Not charge any patient for their laser tattoo removal services once enrolled in the Liberty Program.
6. Provide data collection and reporting for Liberty Program outcomes within the established Health Care Center's Quality Improvement program.
7. Accept the clinical laser equipment from HOSPITAL as a "loan" along with the two year, pre-paid maintenance agreement.

FOUNDATION will provide the following:

1. Participation on the Liberty Program Advisory Board,
2. Informal outreach to community members in support of the Liberty Program and to enhance eligible participant recruitments.

EXHIBIT B

PAYMENT SCHEDULE

Invoices and payments shall be made according to the following schedule:

A. COUNTY shall:

- i. Invoice FOUNDATION upon execution of this Agreement in the amount of \$20,000 for support of the Liberty Program for FY 2011-12.
- ii. Invoice FOUNDATION on or before May 15, 2012 in the amount of \$10,000 for support of the Liberty Program for FY 2012-13.
- iii. Invoice HOSPITAL upon execution of this Agreement in the amount of \$20,000 for support of the Liberty Program for FY 2011-12
- iv. Invoice HOSPITAL on or before May 15, 2012 in the amount of \$20,000 for support of the Liberty Program for FY 2012-13.

B. FOUNDATION shall:

- i. Pay COUNTY within thirty days of execution of this Agreement for the amount of \$20,000 for support of the Liberty Program for FY 2011-12; and
- ii. Pay COUNTY within thirty days of receipt of invoice, but no later than June 15, in the amount of \$10,000 for support of the Liberty Program for FY 2012-13.

C. HOSPITAL shall:

- i. Pay COUNTY within thirty days of execution of this Agreement in the amount of \$20,000 for support of the Liberty Program for FY 2011-12; and
- ii. Pay COUNTY within thirty days of receipt of invoice, but no later than June 15, in the amount of \$20,000 for support of the Liberty Program for FY 2012-13.
- iii. Provide COUNTY with a 2 year, pre-paid maintenance agreement for the tattoo removal laser equipment.

This Agreement does not contain an
Exhibit C

Exhibit D
HIPAA Business Associate Agreement (BAA)
Revised May 19, 2010

This Business Associate Agreement (“BAA”) supplements and is made a part of the Agreement between COUNTY (referred to herein as “Covered Entity”) and HOSPITAL (referred to herein as “Business Associate”).

RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (PHI) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (HIPAA Regulations) and other applicable laws.

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

- g. **Electronic Health Record** shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information** or **PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) 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, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. **Obligations of Business Associate**

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of

confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (c) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 CF.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered

Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528].
- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** Business Associate (and its agents or subHOSPITALs) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Notification of Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security,

intrusion or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

- m. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

- n. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

3. Termination

- a. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of

HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

4. **Certification**

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this BAA.

5. **Amendment to Comply with Law**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or this BAA when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

6. **Assistance in Litigation of Administrative Proceedings**

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.

7. No Third-Party Beneficiaries

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8. Effect on Agreement

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

9. Entire Agreement of the Parties

This BAA supersedes any and all prior and contemporaneous business associate agreement between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

10. Interpretation

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

11. Costs Related to Inappropriate Use, Access or Disclosure of PHI

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA.

Contract Summary Form: Contract Number : _____-_____-_____-_____-_____

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$25,000) or Purchasing (<\$25,000). See also "Contracts for Services" policy. Form not applicable to revenue contracts.

D1. Fiscal Year : FY 2011-12, FY 2012-13
D2. Budget Unit Number..... : 041
D3. Requisition Number..... : n/a
D4. Department Name : Public Health
D5. Contact Person..... : Elizabeth Snyder
D6. Phone : 681-5252

K1. Contract Type (check one): Personal Service Capital Project/Construction
K2. Brief Summary of Contract Description/Purpose: Graduate Medical Education Services
K3. Original Contract Amount..... : \$
K4. Contract Begin Date :
K5. Original Contract End Date :

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

Seq# Effective Date This Amndt Amt Cum Amndt To Date New Total Amt New End Date Purpose (2-4 words)
\$ \$ \$

K7. Department Project Number..... : N/A

B1. Is this a Board Contract? (Yes/No)..... : Yes
B2. Number of Workers Displaced (if any)..... : N/A
B3. Number of Competitive Bids (if any)..... : N/A
B4. Lowest Bid Amount (if bid)..... : N/A
B5. If Board waived bids, show Agenda Date... : N/A
B6. ... and Agenda Item Number : N/A

B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) : Section 9 Removed; Sections 12, 16 Changed; Section 31 New. Exhibits C & D omitted

F1. Encumbrance Transaction Code :
F2. Current Year Encumbrance Amount :
F3. Fund Number..... : 0042
F4. Department Number : 041
F5. Division Number (if applicable)..... :
F6. Account Number..... : 7468
F7. Cost Center number (if applicable)..... :
F8. Payment Terms : Net 30

V1. Vendor Numbers (A=uditor; P=urchasing) . : 704712
V2. Payee/HOSPITAL Name : Santa Barbara Cottage Hospital
V3. Mailing Address : Pueblo at Bath
V4. City State Zip (include +4 if known)..... : Santa Barbara, CA 93105
V5. Telephone Number..... : 569-7293
V6. HOSPITAL's Federal Tax ID Number (EIN or SSN): On File
V7. Contact Person..... :
V8. Workers Comp Insurance Expiration Date . :
V9. Liability Insurance Expiration Date[s] (G=enl; P=rofl) :
V10. Professional License Number..... : #
V11. Verified by (name of County staff)..... :
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 _____