

SECOND AMENDMENT TO AGREEMENT
between
COUNTY OF SANTA BARBARA
and
AMERISOURCEBERGEN DRUG CORPORATION
for
PHARMACEUTICAL DISTRIBUTION SERVICES

Effective November 1, 2012

THIS IS THE SECOND AMENDMENT (hereafter referred to as Second Amendment) to the Agreement for distribution services for pharmaceuticals and other products for the Public Health Department (PHD) Pharmacies, number CN13714, in conjunction with the Prime Vendor Agreement dated May 15, 2011 (hereafter Agreement), by and between the County of Santa Barbara (hereafter Customer) and AmerisourceBergen Drug Corporation (hereafter ABDC).

WHEREAS, the Agreement is effective through May 15, 2014; and

WHEREAS, the PHD is in the process of establishing a Contract Pharmacy Network under the Public Health Services Act, 340B Drug Discount Program requirements; and

WHEREAS, a 340B Contract Pharmacy Network requires that the Public Health Department purchase replenishment medications for contract pharmacies in this Network; and

WHEREAS, Customer will be the Covered Entity for any 340B Contract Pharmacy under its 340B Contract Pharmacy Network; and

WHEREAS, this Second Amendment describes the services and changes necessary to the Agreement for PHD to order and ABDC to supply replenishment medications to those Contract Pharmacies identified in Exhibit 4; and

WHEREAS, this Second Amendment incorporates the terms and conditions set forth in the Agreement and Amendment No. 1, approved by the County of Santa Barbara.

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

- I. **Definitions.** Capitalized terms used in this Second Amendment, to the extent not otherwise defined herein shall have the same meanings as in the Agreement.

340B Contract Pharmacies: Pharmacies that establish a contractual relationship in accordance with the 340B Drug Discount Program requirements to provide prescribed medications to COUNTY PHD patients.

- II. **Amendments.**

For purposes of the provisions described below, the following sections of this Agreement are amended as follows:

1. PRICING AND PAYMENT TERMS

Pricing and Payment for purchases made by PHD for 340B Contract Pharmacies shall be in accordance with Exhibit 1 of the Primary Vendor Agreement for those pharmacies listed in Exhibit 4 whereby ABDC is already delivering Products. Customer remains responsible for payment for inventory replacement of the 340B Contract Pharmacies for eligible PHD patient prescriptions.

Payment for products supplied to other PHD 340B Contract Pharmacies that do not currently receive products from ABDC may be subject to the following charges:

- A \$150 one-time set-up fee to establish a new service location for ABDC. This typically includes establishment of appropriate interface or linkage to ABDC for electronic product pricing updates, utilization information, etc.
- A \$25.00 per delivery fee at each PHD 340B Contract Pharmacy
- Monthly Subscription Fee Per 340B Contract Pharmacy (payable by Customer) for 340B Contract Pharmacies that are not currently serviced by ABDC (see Exhibit 4) with less than \$50,000 per month in Net Purchase volume:
 - 5 day per week delivery - \$1,475 per month
 - 3 day per week delivery - \$975 per month
 - 1 day per week delivery - \$575 per month

ABDC, at its discretion, may waive the above fees for any and all PHD 340B Contract Pharmacies, regardless of existing delivery arrangements.

2. GENERICS PROGRAM PARTICIPATION

For this Second Amendment, the ABDC's "PRxO® Generics" preferred generic formulary does not apply to the Contract Pharmacies.

3. CUSTOMER LOCATIONS AND DELIVERIES

For this Second Amendment and continuing through the Term, the 340B Contract Pharmacies are not considered owned, operated or controlled by PHD. Therefore, these 340B Contract Pharmacies do not meet the definition in this Agreement as a "Facility." Locations of the appropriate PHD 340B Contract Pharmacies are listed in Exhibit 4, attached hereto and incorporated herein by reference. Unless otherwise agreed to by Customer and ABDC, deliveries of 340B replenishment medications to the 340B Contract Pharmacies will be once per week as determined by the 340B Contract Pharmacy in consultation with ABDC.

5. ADDITIONAL SERVICES & PROVISIONS

For this Second Amendment and continuing through the Term, any policy or procedure changes or development related to the 340B Contract Pharmacies must be submitted in writing at least 30 days prior to implementation and must be mutually agreed to by Customer and ABDC.

III. **Additions.** The following sections are added to the Agreement as follows:

10. TERMINATION

For this Second Amendment and continuing through the Term, Termination for any or all 340B Contract Pharmacies listed in Exhibit 4 shall be considered Termination in Part and does not affect the other terms and conditions of the Agreement. Either ABDC or Customer may terminate the services to the 340B Contract Pharmacies without cause upon no less than 90 days' advance written notice.

11. NON-APPROPRIATIONS

In the event that funds are not appropriated, budgeted, or otherwise made available in the consecutive years of this Agreement, then Customer shall immediately notify ABDC of such occurrence and the Agreement may be terminated by either Customer or ABDC. Subsequent to the termination of this Agreement under this provision, except for Product that has been purchased, Customer shall have no obligation to make payments with regard to the remainder of the Term.

12. MISCELLANEOUS

Section 9.5 of Exhibit 3 is amended to replace Pennsylvania law with California law without reference to conflict of laws provisions. In addition, the following will be added to the end of Section 9.5: Customer and ABDC will comply with all federal and state laws, rules and regulations applicable to our respective obligations under this Agreement. Customer and ABDC represent, warrant and certify that each has all required governmental licenses, permits and approvals required to purchase, use and/or store the products Customer buys from ABDC, and that all Customer purchases from ABDC, on behalf of itself or any 340B Contract Pharmacy, are for Customer's "own use" in the 340B Contract Pharmacies, as such term is defined in judicial or legislative interpretation, and not for resale to anyone other than the end user. Failure to enforce any provision of this Agreement will not be considered a waiver of any right to enforce such provision. This Agreement does not create any employment, agency, franchise, joint venture, partnership or other similar legal relationship between the parties.

IV. **Counterparts.** This Second Amendment may be executed in several counterparts, all of which taken together shall constitute a single agreement between the parties.

Second Amendment to Prime Vendor Agreement CN 13714 between the County of Santa Barbara and AmerisourceBergen Drug Corporation.

IN WITNESS WHEREOF, the parties have had a duly authorized officer, partner or principal execute this Prime Vendor Agreement as of its Effective Date.

CUSTOMER

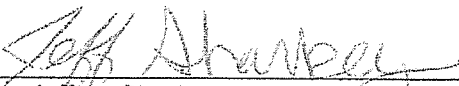
County of Santa Barbara Public Health
Department

By: 
Name: Dan Reid
Title: Assistant Deputy Director, Public Health
Department

Date: 12/6/2012

ABDC

AmerisourceBergen Drug Corporation

By: 
Name: Jeffrey Sharkey
Vice President, Alternate Care

Date: 12-6-12

Exhibit 4 to Prime Vendor Agreement
340B Contract Pharmacy Network Supplied by AmerisourceBergen Drug Corporation

La Joya Pharmacy: 340B 100092272-024119115

LM Caldwell Pharmacist 340B (State Street) 100092273-024119123

L M CALDWELL PHARMACIST 340B (Pueblo Street) 100092274-024119172