

## AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

**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 Sansum-Santa Barbara Medical Foundation Clinic Occupational Medicine Center having its principal place of business at 101 South Patterson Avenue, Santa Barbara, CA 93111, wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

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

1. **DESIGNATED REPRESENTATIVE.** Bobbie Overgaard, Risk Program Administrator at phone number (805) 884-6866, is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. David Wyatt, M.D., Medical Director, Sansum-Santa Barbara Medical Foundation Clinic Occupational Medicine Center, at phone number (800) 281-4425, 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, or otherwise delivered as follows:

To COUNTY:                   Bobbie Overgaard, Risk Program Administrator  
Risk Management/General Services Department  
County of Santa Barbara  
1 East Anapamu Street  
Santa Barbara, CA 93101

To CONTRACTOR:   David Wyatt, M.D., Medical Director  
Sansum-Santa Barbara Medical Foundation Clinic  
Occupational Medicine Center  
101 South Patterson Avenue  
Santa Barbara, CA 93111

Copied to:  
Paul Jaconette, V.P., Chief Administrative Officer  
Sansum-Santa Barbara Medical Foundation Clinic  
P. O. Box 1200  
Santa Barbara, CA 93102-1200

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 December 1, 2007, for an initial period of three (3) years, with two (2) one year options, and will end no later than June 30, 2012, 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 Workers' Compensation Claim Number as 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 sixty (60) 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 it 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 it 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. CONTRACTOR may release documents upon receipt of written authorization or as may be compelled by legal process.

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 other 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 in accordance with applicable State and Federal Mandates 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.** CONTRACTOR shall agree to defend, indemnify and save harmless the COUNTY and 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.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY 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.

17. **TERMINATION.**

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

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

Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. 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 shall, upon giving 30 days written notice of

unsatisfactory performance, allow clinic 30 days to initiate corrective action. If such corrective action does not provide a satisfactory solution within 30 days, COUNTY may terminate this Agreement without further notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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Agreement for Services of Independent Contractor between the **County of Santa Barbara** and Sansum-SBMFC Occupational Medicine Center.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

By: \_\_\_\_\_  
Chair, Board of Supervisors

Date: \_\_\_\_\_

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

CONTRACTOR  
Paul Jaconette  
Executive V.P. / Chief Administrative Officer

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
SocSec or TaxID Number: 95-6419205

APPROVED AS TO FORM:  
STEPHEN SHANE STARK  
COUNTY COUNSEL

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

By: \_\_\_\_\_  
Deputy County Counsel

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
RAY AROMATORIO,  
RISK MANAGEMENT

By: \_\_\_\_\_  
Risk Program Administrator

## EXHIBIT A

### STATEMENT OF WORK

#### COUNTY OF SANTA BARBARA, DEPARTMENT OF GENERAL SERVICES MEDICAL PROVIDERS FOR WORKERS' COMPENSATION PROGRAM

#### MEDICAL PROVIDER REQUIREMENTS

##### 1. SCOPE

- a. The Contractor will treat occupational injuries/illnesses in a comprehensive, coordinated manner.
- b. The Contractor will issue medical reports that are timely and in conformance with the terminology, protocols and regulations of the workers' compensation system.

##### 2. SERVICE AREA FACILITY LOCATION

- a. Santa Barbara            101 South Patterson Avenue, Santa Barbara, CA
- b. Lompoc                    1225 North H Street, Lompoc, CA (Initial visit only)
- c. Carpinteria              4806 Carpinteria Avenue, CA (Initial visit only)

##### 3. EXPERIENCE AND QUALIFICATIONS

- a. During the entire contract period, the Contractor shall have three (3) or more years experience in the delivery of occupational medicine in a comprehensive and coordinated manner.
- b. During the entire contract period, the Contractor shall have services available Monday – Friday.
- c. During the entire contract period, physicians performing services for the County shall be Board Certified Physicians experienced in occupational medicine (QME), or shall be directly supervised by Board Certified Physicians experienced in occupational medicine. The QME certification can be obtained within one year of the effective day of this agreement.
- d. During the entire contract period, the Contractor shall have the ability to measure and report customer/patient satisfaction quarterly.
- e. The Contractor shall notify the County in writing within ten (10) days of any termination, restriction, suspension, corrective action plan or other disciplinary action against the Contractor's license or certification, including notification of any investigation of the Contractor which would affect their licensure or certification.

##### 4. WORKERS' COMPENSATION MANDATORY REQUIREMENTS

- a. The Contractor shall provide initial care on a walk-in, no appointment basis.
- b. The Contractor shall provide comprehensive, coordinated medical services.
- c. The Contractor shall have on-site or access to physical therapy facilities.

- d. The Contractor shall have on-site or access to outpatient surgery facilities.
- e. The Contractor shall have a chiropractic care component.
- f. The Contractor shall provide a case management coordinator.
- g. The Contractor shall deliver the Doctor's First Report of Occupational Injury or Illness, form number DLSR 5021, within **five (5)** business days.
- h. The Contractor shall deliver all other medical reports within **seven to ten (7-10)** business days of medical examination.
- i. The Contractor shall charge for services **at the Official Medical Fee Schedule and in accordance with Attachment B1.**
- j. The Contractor shall conduct training sessions **at request** of Risk Management staff on pertinent medical topics **at the hourly rate of \$250 per hour.**
- k. The Contractor shall have the ability to electronically communicate with the Risk Management staff.

## 5. MEDICAL STANDARDS

- a. Contractor will provide appropriately trained staff for the scheduling of appointments.
- b. The Contractor shall schedule Return to Work examinations within five (5) business days of a request.
- c. The Contractor shall provide brief reports within two (2) business days of examination and full report for County files within **seven to ten (7-10) business days** on all Return to Work examinations, in a format prescribed by the County.
- d. The Contractor shall provide prophylactic treatment for tuberculosis conversions.
- e. The Contractor shall treat blood borne pathogen exposures involving needle sticks in accordance with medical protocols established by the Center for Disease Control.
- f. The Contractor shall provide ongoing consultations and up-dates of medical protocols or regulations to the Risk Management Office.
- g. The Contractor shall provide laboratory work from laboratories certified by the National Institute of Health, Drug/Substance Abuse and Mental Health Services Administration.
- h. The Contractor reports shall be in formats provided or approved by the County.

## 6. BILLINGS

- a. Services will be billed at the Official Medical Fee Schedule (OMFS) rate and in accordance with **Attachment B1.**
- b. Fees specified in **Attachment B1** will apply to services provided under this Contract at any and all of the Contractor's physical locations.

## 7. RECORDS AND REVIEWS

- a. The Contractor shall comply with patient medical record confidentiality requirements set forth in applicable state and federal laws and regulations.
- b. The Contractor shall provide the County with access to all information and records related to medical services provided pursuant to this Contract to the extent permitted by law and without further authorization by the Employee. The County must provide reasonable notice to the Contractor and may not require the Contractor to provide this information at times outside of normal business hours. This requirement remains in effect for an additional six years following termination of this Contract.



**8. SERVICES TO EMPLOYEES AFTER TERMINATION OF CONTRACT**

- a. Regardless of the cause of termination, the County may elect to require the Contractor to provide medical services for an Employee undergoing a current course of treatment for which care was being received at the time of termination.

## EXHIBIT B

### PAYMENT ARRANGEMENTS

#### Periodic Compensation (with attached Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid after services have been rendered.
- B. 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. Payment for services and/or reimbursement of costs shall be based upon the State of California, Division of Workers' Compensation Official Medical Fee Schedule and the fees specified in **Attachment B1**. Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- C. CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE, or other parties as specified by the COUNTY DESIGNATED REPRESENTATIVE, an invoice for the service performed over the period specified. These invoices must cite the assigned Workers' Compensation Claim Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed to cure or relieve the Claimant of the effects of their injury and if found to be satisfactory and within the cost basis of Attachment B1 shall initiate payment processing. Payment for all services will be made in accordance with Attachment B1 and in any event will not exceed the California Department of Workers' Compensation Official Medical Fee Schedule.. COUNTY shall pay invoices or claims for satisfactory work within sixty (60) days of presentation.
- D. 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 B1**

### **Fee Schedule**

Reimbursement for services will be at the rates designated by the State of California, Division of Workers' Compensation Official Medical Fee Schedule (OMFS).

Reimbursement equal to the Medicare fee plus twenty percent (20%) is applicable to all non-OMFS procedures in the categories of Electro-Diagnostic Testing, MRI, C.T's and Epidurals.

For non-OMFS procedures for which there is no Medicare fee, a twenty percent (20%) discount off the usual and customary fee is applicable to procedures.

## **Exhibit C Indemnification**

### **A. INDEMNIFICATION BY CONTRACTOR**

Except for claims pertaining to professional services, CONTRACTOR shall indemnify, defend and hold COUNTY, and COUNTY's agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, advertising injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance of constitutional provision, or other cause which arise out of, relate to, or result from the activities or omissions, negligent or otherwise, under this Agreement of CONTRACTOR, and CONTRACTOR's officers, agents and employees (Claims).

In claims, damages, losses, causes of action and expenses, including attorneys' fees, pertaining to professional services, including but not limited to claims of medical malpractice (Professional Claims), wherein COUNTY, and/or its agents, officers and employees, is/are named as a party(ies), COUNTY shall, at its own expense, represent and defend itself and its agents, officers and employees in any such Professional Claims, and shall further coordinate and cooperate with CONTRACTOR in the defense of such Professional Claims.

In excepting Professional Claims from the scope of this indemnification provision, CONTRACTOR acknowledges that where liability for Professional Claims is founded on the activities or omissions of CONTRACTOR and CONTRACTOR's officers, agents and employees (Professional Services Liability), COUNTY may have a claim for repayment or contribution against CONTRACTOR for the amount of any monetary damages paid and reasonable legal fees and costs incurred in defense of any third party action by COUNTY for which COUNTY was legally obligated to pay in connection with such Professional Services Liability. Prior to initiating any legal action, COUNTY shall make reasonable written demand on CONTRACTOR to repay to COUNTY the amount paid by COUNTY in connection with Professional Services Liability. In the event CONTRACTOR fails to pay such amount to COUNTY, and COUNTY is required to file a court action in order to receive payment from CONTRACTOR, and as a result COUNTY either receives payment from CONTRACTOR or is awarded the right to such payment, COUNTY shall be entitled to an award of its reasonable legal fees and costs incurring in bringing the court action.

### **B. INDEMNIFICATION BY COUNTY**

COUNTY shall indemnify, defend and hold CONTRACTOR and CONTRACTOR's agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance of constitutional provision, or other cause which arise out of, relate to, or result from the activities or omissions, negligent or otherwise, under this Agreement of COUNTY, and COUNTY's officers, agents and employees, including but not limited to performing or authorizing the performance of, or in failing to perform or authorize the performance of any work, services or functions provided for, referred to in or in any way connected with any work, services or functions to be performed under this Agreement.

### **C. INDEMNIFICATION PROCEDURE**

The party seeking indemnification under this provision (Indemnified Party) will notify the other party (Indemnifying Party) promptly upon receipt of notice of any claim subject to indemnification under this provision. Except as expressly provided in subsection "A" above, upon such notice to the Indemnifying Party, the Indemnifying Party shall assume full responsibility and control for the complete defense and any settlement or other resolution of such claim (exercising reasonable business judgment) on behalf and for the interests of both the Indemnifying Party and the Indemnified Party. The Indemnified Party shall cooperate with and provide all reasonable assistance as requested by Indemnifying Party to defend any such claim.