

AGREEMENT
between
COUNTY OF SANTA BARBARA
and
ECG MANAGEMENT CONSULTANTS, INC.
for
CONSULTATION SERVICES FOR THE DEVELOPMENT OF AN
ELECTRONIC HEALTH RECORD SYSTEM
for the period
JANUARY 1, 2010 through DECEMBER 31, 2010

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 ECG Management Consultants, Inc. having its principal place of business at 1111 Third Avenue, Suite 2700, Seattle, Washington 98101 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, COUNTY owns and operates ambulatory clinics and satellite clinics in ten locations throughout Santa Barbara County; and

WHEREAS, COUNTY is mandated to serve as the safety net provider for inpatient and outpatient medical services; and

WHEREAS, COUNTY has identified the need to establish an electronic health record system in order to maintain and improve patient care and clinical operations; and

WHEREAS, the COUNTY requires specialized consultation experience and expertise to oversee elements of the electronic health record system development; and

WHEREAS, the COUNTY implemented a vendor search that involved identification of potential vendors, request for information submittals, review and evaluation of submittals and ultimately selected ECG Management Consultants, Inc., a consultant vendor with expertise in the implementation of an electronic health records system; and

WHEREAS, COUNTY has an interest in contracting with CONTRACTOR to provide the analysis, guidance, recommendations and evaluation necessary to develop an electronic health record system.

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

1. **DESIGNATED REPRESENTATIVE.** Daniel Reid at phone number (805) 681-5173 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Laura D. Jantos at phone number 206-689-2200 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, as follows:

To COUNTY: Daniel Reid, Assistant Deputy Director
Public Health Department
Primary Care and Family Health Division
300 North San Antonio Road
Santa Barbara, CA 93101

To CONTRACTOR: Laura D. Jantos, Principal
ECG Management Consultants, Inc
1111 Third Avenue, Suite 2700
Seattle, WA 98101

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.** The term of this agreement shall be for one year from January 1, 2010 through December 31, 2010 for services to be provided as needed by COUNTY, unless terminated sooner as provided herein.

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 a standardized invoice as authorized by COUNTY, which shall include the contract number, description of services per project element and by budget line item, status of project element completed (percentage complete), dates of service provision, costs per line item and total invoice costs. Invoice shall contain ECG Management Consultants, Inc. letterhead and be signed and dated by principal or designated representative. 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 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. All services, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be performed in a manner consistent with the community standard and shall conform to the standards of quality normally observed by those practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY's request without additional compensation. Permits and licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. **TAXES.** COUNTY and CONTRACTOR shall be responsible for paying their respective taxes required by state, federal, or local taxing agencies.

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 and CONTRACTOR shall be the owners of their respective work product created within the scope of this Agreement, including but not limited to the following, 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. Neither CONTRACTOR nor COUNTY shall release any materials under this section without the prior written approval of the other party.

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.** CONTRACTOR shall indemnify and hold harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the negligent performance or attempted performance of the provisions of this Agreement, including any willful or negligent act or omission to act on the part of the CONTRACTOR or its agents or employees or other independent contractors directly responsible to it to the fullest extent allowable by law. CONTRACTOR agrees 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 and COUNTY agree that this is not an exclusive Agreement and that both parties 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 or CONTRACTOR desires.

16. **ASSIGNMENT.** Neither CONTRACTOR 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.

17. **TERMINATION.**

A. **Termination for Cause.** In the event of a material breach of this Agreement, either party may initiate termination of the Agreement. The aggrieved party shall serve the other

party 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 CONTRACTOR may include, but not be limited to: (i) CONTRACTOR's failure to meet the requirements described in Exhibit A of this Agreement. A material breach by COUNTY may include, but not be limited to, failing to make timely payments as required by this Agreement.

The party 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 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 receiving notice, or the parties do not reach an agreement during the notice period, the parties shall 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, and this Agreement shall terminate upon completion of the thirty (30) days notice period, at the option of the noticing party, notwithstanding any other provision of this Agreement.

B. Termination Without Cause. This Agreement may be terminated by either party without cause upon sixty (60) days' advance written notice to the other party.

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 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 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.** 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.

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

31. **MEDICAL RECORDS.** All medical records to be provided by COUNTY to the CONTRACTOR shall be provided according to, and the extent allowable under, applicable privacy and confidentiality laws including, without limitation, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and all rules and regulations promulgated thereunder.

32. **FORCE MAJEUR.** No party shall be liable for nonperformance, defective performance or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information system interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each party shall use its good faith efforts to perform its duties and obligations under this Agreement.

33. **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.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **ECG Management Consultants, Inc.**

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

COUNTY OF SANTA BARBARA

ATTEST:
MICHAEL F. BROWN
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:
MICHELE MICKIEWICZ, MPH
INTERIM DIRECTOR
PUBLIC HEALTH DEPARTMENT

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

By: _____
Director

By: _____
Risk Manager

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **ECG Management Consultants, Inc.**

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

CONTRACTOR

By: _____

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. CONTRACTOR Responsibilities:

CONTRACTOR shall serve as a consultant for and on behalf of the COUNTY and in this capacity shall provide the following services in collaboration with the COUNTY:

Phase I: Requirements Definition

1. Review and document relevant background and historical information on COUNTY's Information Technology System in relation to patient healthcare.
2. Assess COUNTY's current and long-range goals and objectives for patient outcomes.
3. Deliverables: Background Data Request and System Requirements.

Phase II: Work Flow Analysis and Electronic Health Record (EHR) Readiness

1. Observe COUNTY processes and procedures at multiple county clinic locations.
2. Identify opportunities for beneficial change.
3. Develop work flow redesigns based upon industry best practice models.
4. Develop strategic plans and objectives to implement and evaluate each identified opportunity.
5. Deliverables: Current and Future State Work Flow Diagrams

Phase III: Vendor Selection

1. Develop Request for Proposal (RFP) to facilitate vendor selection:
 - a. Draft RFP based upon Phase I outcomes
 - b. Identify appropriate target vendors for RFP process
 - c. Develop Evaluation Methodology Workbook (EMW) to guide RFP review process.
2. Facilitate RFP evaluation process by COUNTY review team and documentation of evaluation outcome:
 - a. Create vendor demonstration scripts and protocols.
 - b. Assist with [in the] evaluation of RFP cost analysis as specified by COUNTY.
 - c. Assist in contract development for selected vendor.
 - d. Summarize RFP findings.
3. Deliverables: RFP, EMW, Cost Analysis, Contract Review and Process Summary

Phase IV: Implementation Planning and Project Management

1. In collaboration with COUNTY, develop an implementation project plan that will include:
 - a. Development of clear and concise project goals and objectives.
 - b. Baseline assessments of key revenue, productivity and quality of care metrics.

- c. Development of a strategy to minimize impacts of implementation to staffing, revenue and patients.
 - d. Facilitate input from key project stakeholders.
 - e. Development of an internal and external project marketing plan (i.e. assisting COUNTY leadership to consistently communicate the project vision, goals, objectives, timelines and projected outcomes).
 - f. Assist with the development of an implementation budget.
2. Deliverables: Implementation goals, baseline statistics, productivity strategy, data conversion strategy, project charter, implementation project plan, project staffing model, and implementation budget

Optional: Training and Evaluation Assistance

1. Assist COUNTY in evaluating vendor training and implementation progress, including:
 - a. Perform periodic assessments of implementation project outcomes.
 - b. Report findings to Electronic Health Record Steering Committee.
 - c. Develop recommendations for project modification as necessary.
2. If mutually agreed to by COUNTY and CONTRACTOR, provide project management assistance with electronic health record system implementation project. This option will require development of an agreement amendment, revision to Statement of Work, Budget and Payment Arrangements.
3. Deliverables: Training Plan and Quarterly Implementation Progress Review.

CONTRACTOR will be compensated for services and expenses according to the line item budget displayed in Table 1. This table is subject to change with mutual consent by each party and is intended as an estimation of the time required to complete each of the project tasks.

Table 1 Santa Barbara County EHR Project Costs

ECG Management Consultants Santa Barbara County PHD EHR Selection Project Budget	Project Officer	Project Manager	Senior Consultant
Project Elements	Hours	Hours	Hours
Project Kickoff (On-site)	4	8	12
16 Steering Committee Meetings (On-site)	48	64	128
Data Request	1	1	2
Data Review	1	2	4
3-day Visit (On-site)	8	24	24
System Requirements	2	8	16
3-day Observation (On-site)	0	24	24
Current State	2	8	16
Future State	2	8	16
RFP Development	2	4	16
EMW Refinement	1	2	8
RFP Scoring	0	1	4
Demonstrations (On-site)	0	0	40
Site Visit/Reference Check Facilitation	0	1	4
Cost Analysis (3)	1	4	36
Contract review (2)	4	8	0

ECG Management Consultants Santa Barbara County PHD EHR Selection Project Budget	Project Officer	Project Manager	Senior Consultant
Evaluation summary	1	2	8
Implementation Goals	1	2	4
Baseline Statistics	1	2	4
Productivity Strategy	1	2	4
Data Conversion Strategy	0.5	1	2
Charter	0.5	2	8
Project Plan	2	4	16
Staffing Model	2	2	4
Implementation Budget	2	4	12
Training Plan	1	2	4
Optional Element			
Quarterly Review (1 wk x 4)	32	80	160
Total Hours	120	270	576
Hourly Rate	315	250	190
Total Cost	\$37,800	\$67,500	\$109,440
Project Related Expenses			\$32,211
Total Costs With Optional Element			\$246,951
Total Hours without Optional Element	88	190	416
Hourly Rate	315	250	190
Subtotal Cost without Optional Element	\$27,720	\$47,500	\$79,040
Project Related Expenses			\$32,211
Total Cost without Optional Element			\$186,471

Project Schedule

CONTRACTOR shall provide consultation services according the project schedule in Table 2 below.

Table 2 Project Schedule

Project Elements	January	February	March	April	May	June	July - December
Requirements Definition							
Work Flow Analysis and EHR Readiness							
Vendor Selection							
Implementation Planning							
Training and Evaluation Assistance (Optional)							

EXHIBIT B

PAYMENT ARRANGEMENTS

For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid during the course of the engagement, monthly for services based upon the actual fees and project-related expenses incurred.

- A. Monthly invoices for personnel and project expenses shall be provided at the rates identified in Table 3:

Table 3 CONTRACTOR RATES

Expenditure Category	Hours	Rate	Cost
Personnel			
Project Officer	120	\$315	\$ 37,800
Project Manager	270	\$250	\$ 67,500
Project Staff	576	\$190	\$109,440
Total Personnel			\$214,740
Project Expenses			\$ 32,211
Total			\$246,951

1. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$246,951 for the contract period of January 1, 2010 through December 31, 2010.
2. 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 costs, expenses, overhead charges and hourly rates for personnel, as defined in **TABLE 1 CONTRACTOR RATES**. Invoices submitted for payment that are based upon **EXHIBIT A and TABLE 1** must contain a report sufficient in detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
3. 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.
4. The parties acknowledge that during the performance of this Agreement, each shall have access to confidential information of the other. County acknowledges that many of the materials utilized by Contractor to develop and produce the deliverables required by this Agreement constitute Contractor's trade secrets and thereby comprise confidential information of Contractor. Contractor acknowledges that the data it will receive to prepare Background Data Request, System Requirements and Work Flow Diagrams will include confidential information of the County. On this basis, the parties agree that each party shall protect the confidential information received from the other party as if it were its own confidential information, shall not use such confidential information except as expressly permitted under this Agreement, and shall not disclose such confidential information to any third party without the other party's prior written consent.
5. CONTRACTOR shall be responsible for Workers' Compensation and Accident Insurance, for its staff and in accordance with Exhibit C.

EXHIBIT C

STANDARD INSURANCE PROVISIONS FOR CONTRACTS REQUIRING PROFESSIONAL LIABILITY INSURANCE

INDEMNIFICATION

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

INSURANCE

Without limiting the Contractor's indemnification of the COUNTY, Contractor shall procure the following required insurance coverages at its sole cost and expense. All insurance coverage is to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place Contractor in default. Upon request by the COUNTY, Contractor shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all Contractor's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event Contractor is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if Contractor has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and Contractor submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of Contractor and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the Contractor in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and Contractor. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of Contractor pursuant to Contractor's activities hereunder. Contractors shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said

policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the Contractor is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of Contractor's professional staff with a combined single limit of not less than \$2,000,000 per occurrence or claim and \$5,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is on a 'claims-made' form, the Contractor is required to maintain such coverage for a minimum of three (3) years following completion of the performance or attempted performance of the provisions of this agreement.

Contractor shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated COUNTY representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY's rights to insurance coverage hereunder.

In the event the Contractor is not able to comply with the COUNTY's insurance requirements, COUNTY may, at their sole discretion and at the Contractor's expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of COUNTY Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. Contractor agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

EXHIBIT D

---- INTENTIONALLY OMITTED ----

THIS AGREEMENT DOES NOT INCLUDE EXHIBIT D

EXHIBIT E

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

1. Use and Disclosure of Protected Health Information

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

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

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

3. Applicable Laws

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

4. Requirement to Train Own Employees and Workforce

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

5. Further Disclosure of PHI

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

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

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

6. Safeguarding PHI

The Contractor shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the underlying Agreement. Contractor shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI that Contractor creates, receives, maintains or transmits on behalf of County. The actions taken by the Contractor to safeguard EPHI shall include, but may not be limited to:

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

7. Unauthorized Use or Disclosure of PHI

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

8. Agents and Subcontractors of the Business Associate

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

9. Access to PHI

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

10. Amendments to Designated Record Sets

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

11. Documentation of Uses and Disclosures

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

12. Accounting of Disclosures

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

13. Records Available to Covered Entity and Secretary

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

14. Destruction of PHI

a. Upon termination of the underlying Agreement for any reason, the Contractor shall:

- (1) Return all PHI received from the County, or created or received by the Contractor on behalf of the County required to be retained by the Privacy Rule; or
- (2) Return or destroy all other PHI received from the County, or created or received by the Contractor on behalf of the County.

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

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

15. Amendments

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

16. Mitigation of Disallowed Uses and Disclosures

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

17. Termination of Agreement

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

18. Definitions

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

19. Interpretation

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

Contract Summary Form:

Contract Number : _____ - _____ - _____ - _____

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 09/10 -10/11
D2.	Budget Unit Number (<i>plus -Ship/-Bill codes in paren's</i>):	:	041
D3.	Requisition Number	:	N/A
D4.	Department Name	:	Public Health
D5.	Contact Person	:	Daniel Reid
D6.	Phone.....	:	805.681.5173
K1.	Contract Type (<i>check one</i>):	[x]	Personal Service [] Capital Project/Construction
K2.	Brief Summary of Contract Description/Purpose	:	Management Consultation Services
K3.	Original Contract Amount	:	\$246,951
K4.	Contract Begin Date	:	1/1/10
K5.	Original Contract End Date	:	12/31/10
K6.	Amendment History (<i>leave blank if no prior amendments</i>):		
	<u>Seq#Effective DateThisAmndtAmtCumAmndtToDateNewTotalAmt NewEndDate Purpose (2-4</u>		
	<u>words)</u>	\$	\$
K7.	Department Project Number.....	:	N/A
B1.	Is this a Board Contract? (<i>Yes/No</i>).....	:	Yes
B2.	Number of Workers Displaced (<i>if any</i>)	:	N/A
B3.	Number of Competitive Bids (<i>if any</i>).....	:	N/A
B4.	Lowest Bid Amount (<i>if bid</i>).....	:	N/A
B5.	If Board waived bids, show Agenda Date	:	
B6.	... and Agenda Item Number	:	
B7.	Boilerplate Contract Text Unaffected?	:	4, 5, 8, 11, 13, 15, 16, 17, 30, 31, & 32
F1.	Encumbrance Transaction Code.....	:	
F2.	Current Year Encumbrance Amount	:	
F3.	Fund Number	:	0042
F4.	Department Number	:	041
F5.	Division Number (<i>if applicable</i>).....	:	3001
F6.	Account Number	:	7460
F7.	Cost Center number (<i>if applicable</i>).....	:	
F8.	Payment Terms.....	:	Net 30
V1.	Vendor Numbers (<i>A=uditor; P=urchasing</i>)...	:	
V2.	Payee/Contractor Name	:	ECG Management Consultants, Inc.
V3.	Mailing Address	:	1111 Third Avenue, Suite 2700
V4.	City State (<i>two-letter</i>) Zip (<i>include +4 if known</i>)	:	Seattle, WA 98101
V5.	Telephone Number	:	206.689.2200
V6.	Contractor's Federal Tax ID Number (<i>EIN or SSN</i>)	:	On file
V7.	Contact Person	:	Laura D. Jantos
V8.	Workers Comp Insurance Expiration Date...	:	N/A
V9.	Liability Insurance Expiration Date[s] (<i>G=enl; P=rofl</i>)	:	
V10.	Professional License Number.....	:	n/a
V11.	Verified by (<i>name of COUNTY staff</i>).....	:	
V12.	Company Type (<i>Check one</i>):	[]	Individual [] Sole Proprietorship [] Partnership [X] Corporation

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

Date _____: Authorized Signature _____