

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

between

COUNTY OF SANTA BARBARA

and

PACIFIC DIAGNOSTIC LABORATORIES

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 Pacific Diagnostic Laboratories, LLC having its principal place of business at 454 S. Patterson Avenue, Santa Barbara, CA (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, COUNTY completed a public bid process for the privatization of Clinical Laboratory Services for Public Health Department patients in 2013; and

WHEREAS, CONTRACTOR was awarded the bid as a result of this public bid process; and

WHEREAS, COUNTY and CONTRACTOR plan to establish an electronic interface between the COUNTY Public Health Department's Electronic Health Record and the CONTRACTOR'S Laboratory Information System; and

WHEREAS, COUNTY and CONTRACTOR plan to establish patient service centers in Public Health Department Health Care Centers to collect Public Health Department patient specimens for diagnostic testing at CONTRACTOR facilities; and

WHEREAS, COUNTY and CONTRACTOR are committed to the transition of COUNTY Clinical Laboratory Services to CONTRACTOR in a timely fashion that minimizes disruption of services for existing Public Health Department Clinical Laboratory staffing and Public Health Department patients; and

WHEREAS, CONTRACTOR is poised to provide assistance with the management and operations of COUNTY Clinical Laboratory Services during this transition; and

WHEREAS, the parties desire to execute a new Agreement commencing March 4, 2014 and terminating June 30, 2017; and

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

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

1. **DESIGNATED REPRESENTATIVE.** Dan Reid at phone number (805) 681-5173 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Wayne Weckslar at phone number (805) 879-8122 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: Dan Reid, Assistant Deputy Director
Public Health Department, Primary Care and Family Health
300 N. San Antonio Road, Building 1
Santa Barbara, CA 93110
Dan.Reid@sbcphd.org

To CONTRACTOR: Wayne Weeksler, Ph.D.
General Manager
Pacific Diagnostic Laboratories, LLC
454 S. Patterson Avenue
Santa Barbara, CA 93111-2404
wweeksle@sbch.org

cc: Steven A. Fellows
Executive Vice President and Chief Operating Officer
Cottage Health System
PO Box 689
Santa Barbara, CA 93102-0689
sfellows@sbch.org

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 March 4, 2014 and end performance upon completion, but no later than June 30, 2017 unless otherwise directed by COUNTY or unless earlier terminated.

5. COMPENSATION OF CONTRACTOR. In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above, following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. INDEPENDENT CONTRACTOR. It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor and not as an officer, agent, servant, employee joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is

performing its obligations in accordance with the terms and conditions hereof. 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. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

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. DEBARMENT AND SUSPENSION. CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended

9. TAXES. CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. 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.

10. CONFLICT OF INTEREST. CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, 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. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

11. NO PUBLICITY OR ENDORSEMENT. CONTRACTOR and COUNTY agree not to use the other party's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Neither party shall use the other party's name or logo in any manner that would give the appearance that one party is endorsing the other. CONTRACTOR and COUNTY shall not in any way contract on behalf of or in the name of the other party. Each party agrees it shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the other party or its projects, without obtaining the prior written approval of the other party.

12. OWNERSHIP OF DOCUMENTS. CONTRACTOR shall be the owner of all records related to laboratory testing performed under this agreement and will make them available for inspection to County upon request during normal business hours or by mutual agreement.

13. COUNTY PROPERTY AND INFORMATION. All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

14. 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. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. MUTUAL INDEMNIFICATION. CONTRACTOR shall, at its expense, indemnify, defend, and hold harmless COUNTY, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation, reasonable attorneys' fees, and expenses from any claim or action, including without limitation for property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of CONTRACTOR, its officers, employees, agents, or subcontractors, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees or agents. COUNTY shall promptly give CONTRACTOR notice of such claim.

COUNTY shall, at its expense, indemnify, defend, and hold harmless CONTRACTOR, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation, reasonable attorneys' fees, and expenses from any claim or action, including without limitation, for property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of COUNTY, its officers, employees, agents, or subcontractors, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of County, its officers, employees or agents. CONTRACTOR shall promptly give COUNTY notice of such claim.

16. INSURANCE. It is understood and agreed that CONTRACTOR and COUNTY maintain insurance (self or group) programs to fund their respective liabilities, including without limitation professional, general and motor vehicle liability and workers compensation insurance. A certificate of insurance shall be delivered to the other party at the commencement of this Agreement, and at the request of the other party.

CONTRACTOR will ensure that it carries a minimum professional and general liability insurance policy in the amounts of Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate. If the policy is written on a "claims-made" form, the policy will provide a three (3) year extended reporting period.

COUNTY will ensure that it carries a minimum professional and general liability insurance policy in the amounts of Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate. If the policy is written on a "claims-made" form, the policy will provide a three (3) year extended reporting period.

17. 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 included in Exhibit D and CONTRACTOR agrees to comply with said ordinance.

18. EXCLUSIVITY AGREEMENT. CONTRACTOR and COUNTY agree that for the first 24 months of this Agreement, CONTRACTOR shall be the sole and exclusive entity providing COUNTY with each of the services described in this Agreement. After 24 months, CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall, from that time forward, 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.

19. NON-ASSIGNMENT. Neither CONTRACTOR nor COUNTY shall assign, transfer or subcontract this Agreement or any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the other party and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

20. 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 either party may include failing to comply with the duties and responsibilities set forth in Section 3 of 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. After 24 months, this Agreement may be terminated by either party without cause upon ninety (90) days' advance written notice to the other party.

1. For Non-appropriation of Funds. 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.

C. UPON TERMINATION, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services 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.

21. 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.

22. 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.

23. 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.

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

25. 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.

26. 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.

27. SUCCESSORS AND ASSIGNS. Subject to Section 19 (Non-Assignment), 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.

28. 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.

29. CALIFORNIA LAW AND JURISDICTION. 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.

30. 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.

31. AUTHORITY. All signatories and 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.

32. SURVIVAL. All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

33. 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.

34. COMPLIANCE WITH HIPAA. CONTRACTOR is expected to adhere to all requirements of the Business Associate Agreement in EXHIBIT C.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Pacific Diagnostic Laboratories**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on March 4, 2014.

COUNTY OF SANTA BARBARA

ATTEST:
MONA MIYASATO
CLERK OF THE BOARD

Chair, Board of Supervisors

By: _____
Deputy Clerk

Date: _____

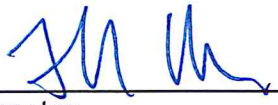
APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By:  _____
Deputy County Counsel


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

By:  _____
Deputy

APPROVED
TAKASHI WADA, MD, MPH
DIRECTOR / HEALTH OFFICER
PUBLIC HEALTH DEPARTMENT

By:  _____
Director

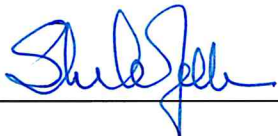
APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By:  _____
Risk Manager

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Pacific Diagnostic Laboratories**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on March 4, 2014.

CONTRACTOR

By: 

STEVEN A. FELLOWS
EVP and COO
PACIFIC DIAGNOSTIC LABORATORIES
Date: 2-14-14

By: 

JOAN BRICHER
Sr. VP and CFO
PACIFIC DIAGNOSTIC LABORATORIES
Date: 2/14/2014

EXHIBIT A

STATEMENT OF WORK

1. **SERVICES TO BE PROVIDED:** CONTRACTOR shall provide medical and professional services as required and in accordance with the policies of the Public Health Department (PHD) spelled out in this Agreement.
2. CONTRACTOR shall provide industry standard pathology and clinical laboratory services as required by COUNTY twenty-four (24) hours per day, seven (7) days per week at their main laboratory location (454 S. Patterson Avenue, Goleta) or through appropriate reference laboratory arrangements.
3. CONTRACTOR will, at its own cost, furnish and maintain such space, equipment and personnel at its facility and the COUNTY Health Care Centers (see Exhibit A.1) as may be necessary to collect patient specimens as ordered by PHD providers and to provide COUNTY with clinical laboratory services for the performance of chemistry, microbiology, serology, hematology, pathology, and other such tests as may be required by COUNTY. CONTRACTOR shall also, at its expense, keep and maintain appropriate staffing levels (as per State laboratory licensure requirements) and equipment in good order and repair and replace such equipment or any part of it which becomes worn out or obsolete when so deemed by CONTRACTOR.
4. CONTRACTOR specimen collection staff will be State certified as a phlebotomy technician, maintain certification up to date, and provide specimen collection services at the Santa Barbara, Santa Maria and Lompoc Health Care Centers during existing hours of operation. In addition, at least one full time equivalent (40 hours per week) certified phlebotomy technician shall be made available to be shared between the Franklin and Carpinteria Health Care Center on a schedule to be mutually agreed to by CONTRACTOR and COUNTY.
5. Specimen transportation will be provided by CONTRACTOR utilizing existing or subcontracted courier services at no charge to COUNTY.
6. CONTRACTOR shall offer those PHD patients that do not have third party coverage a sliding fee scale based upon income that has been reviewed and approved by PHD (see Exhibit B.1)
7. PHD shall provide financial class information available at time of test order to CONTRACTOR through an electronic interface or other mutually acceptable means. CONTRACTOR is strongly encouraged to verify patient financial class information at time of specimen collection as patient financial class is subject to change.
8. CONTRACTOR shall bill all third party payers directly for all appropriate clinical laboratory services. Third party payers may include other County Agencies (e.g. Alcohol Drug and Mental Health Services Department, Probation Department, etc.) or other Agencies such as Veterans Administration which are not to be billed to PHD. CONTRACTOR shall bill PHD for PHD sponsored Special Account patients (e.g. Health Care for the Homeless, Ryan White, Tuberculosis Program and/or Indigent Care Program) as specified in Exhibit B. PHD will identify Special Account Patients through the electronic interface messages accompanying the test order.
9. CONTRACTOR's personnel shall be responsible for courier service to pick-up specimens for both north and south county health care center and satellite facilities on a mutually agreeable schedule to provide services on days that centers and/or satellites are in operation. At all times, a CONTRACTOR's

duly qualified employee shall be on-call and available to respond immediately to provide clinical laboratory STAT pick-up and testing capabilities.

10. CONTRACTOR shall deliver routine reports of results of laboratory tests to PHD in twenty-four (24) hours or less. STAT testing turnaround time will be no longer than four (4) hours from request for service. See Exhibit A.2 for STAT testing Menu. STAT reports are transmitted electronically and by fax. STAT requests must be phoned to CONTRACTOR who will dispatch a courier to pick up the sample. PDL will assess a STAT charge for this service as outlined in Exhibit B.

11. CONTRACTOR shall purchase, at its own expense all necessary supplies such as chemicals, glassware, requisitions, stationery and other expendable items needed for the performance of tests and will provide PHD with all supplies necessary for ordering and collecting laboratory specimens and protecting in transport to CONTRACTOR.

12. CONTRACTOR shall keep current on pathology and laboratory policies and procedures applicable to PHD. CONTRACTOR shall participate in College of American Pathologists (CAP) or equivalent proficiency testing programs.

In rendering services under this agreement, CONTRACTOR shall comply with all applicable provisions of the law, regulations and rules of any and all government authorities. Such compliance shall include any requirements which CONTRACTOR must meet in order to maintain PHD compliance with such laws, regulations and rules, and to preserve its licensure and accreditation with respect to Pathology and Laboratory Services. Applicable Law and Regulation includes, but is not limited to, provisions of Title 22, California Administrative Code, Division 5 relative to Clinical Laboratory Services, and Medicare Certification Standards including compliance with all of the provisions of Clinical Laboratory Improvement Act, 1988 (CLIA) (P.L. 100-578). CONTRACTOR shall also comply with standards of the College of American Pathologists (CAP) or equivalent accrediting agency.

13. CONTRACTOR shall lead the development of a bi-directional HL7 interface for clinical laboratory orders and test resulting between the PHD's Electronic Health Record (EHR - General Electric (GE) Centricity), selected third party interface and/or middleware vendor and the CONTRACTOR's Laboratory Information System (LIS). The interface will be completely functional within 90 days of the later of the execution date of this agreement or the acquisition and installation date of the middleware product by COUNTY. HL7 is a non-profit organization involved in the development of international healthcare informatics interoperability standards. CONTRACTOR will utilize the services of a mutually agreed upon third party vendor and/or middleware vendor to assist with the development of the interface and to improve the order and result elements of the GE EHR.

14. CONTRACTOR is committed to assisting COUNTY maintain clinical laboratory services throughout transition and development of the system interface. Failure to successfully complete the development and implementation of this interface within 90 days of the later of the execution date of the signed contract or the acquisition and installation date of the middleware product by COUNTY will require CONTRACTOR to assume responsibility for all PHD clinical laboratory operations including appropriate and necessary staffing levels and licensure to provide specimen processing, specimen testing, reporting and billing, at no additional cost to the COUNTY. Specific operational changes must be mutually agreeable.

15. CONTRACTOR shall provide a mutually agreeable CONTRACTOR staff member (Account Manager) assigned to PHD to facilitate communications among PHD clinic providers, clinic staff and staff of CONTRACTOR following the completion of the interface and transition of services to CONTRACTOR and commencing on July 1, 2014. Account Manager shall be the main point of contact for PHD staff

regarding all PDL operations and shall be responsible for facilitating that PHD test ordering and test results are properly transmitted, received and reported through the developed bi-directional interface. Account Manager shall be responsible troubleshooting clinical laboratory and specimen collection operations, identifying areas of PHD or CONTRACTOR data or workflow errors and providing recommendations to either or both organizations to improve PHD patient outcomes and staff workflow efficiencies. COUNTY will monitor the interface between their EHR and the middleware ordering/receiving software and will be responsible for resolving errors in this interface. COUNTY will also monitor the results interface between CONTRACTOR's LIS and the middleware ordering/receiving software. COUNTY will be responsible for the validation of results populating into the GE EHR. COUNTY at its discretion may provide Account Manager with access to its GE HER. Account Manager may participate in PHD operations meetings, policy development meetings or meetings with the PHD Community Health Center Board as requested by COUNTY.

16. CONTRACTOR shall support the ongoing maintenance of the interface to ensure orders and results transmit from the laboratory ordering system to the CONTRACTOR LIS and the results transmit from the CONTRACTOR LIS to the laboratory result system. CONTRACTOR shall monitor the orders interface from COUNTY's middleware ordering/receiving software and resolve all problems with transmitted orders.

17. In conformance with the CAP or equivalent guidelines, CONTRACTOR shall have a Quality Assurance (QA) program that documents the following:

A. PRE-ANALYTICAL:

- 1) Notify COUNTY when a test procedure cannot be performed for any reason upon receipt of specimen on the same or next business day.
- 2) Notify COUNTY when misidentification of specimen occurs on same or next business day.
- 3) Notify COUNTY when there is uncertainty of test being requested.
- 4) Provide documentation of test and procurement requirements and updates.
- 5) Notify COUNTY of changes in panel/profile content.
- 6) Notify COUNTY of changes in methodology and reference ranges.
- 7) Notify COUNTY if request for special referral cannot be honored before specimen is referred out.

B. ANALYTICAL:

Allow COUNTY access to documentation that accreditation and Clinical Laboratory Improvement Act, 1988 (CLIA) QC requirements are followed.

C. POST ANALYTICAL:

- 1) Provide COUNTY with clean and concise report format.
- 2) Call panic values, fax STATs, and immediately communicate anything life threatening to COUNTY as soon as available and document that communication in CONTRACTOR's LIS.
- 3) Note all changes in test results with comment "corrected" or "amended" report.

EXHIBIT A.1

Location of CONTRACTOR Patient Service Centers within COUNTY Health Care Centers

Carpinteria Health Care Center
931 Walnut Avenue, Carpinteria

Franklin Health Care Center
1136 E. Montecito Street, Santa Barbara

Santa Barbara Health Care Center
345 Camino del Remedio, Santa Barbara

Santa Maria Health Care Center
2115 S. Centerpointe Parkway, Santa Maria

Lompoc Health Care Center
301 North R Street, Lompoc

EXHIBIT A.2
Available STAT Testing

BLOOD BANK

Type and Crossmatch for Transfusion

HEMATOLOGY

CBC (or any component)
CSF Cell Count
D-Dimer (PE/DVT)
DIC Screen
Fibrinogen
Hemoglobin and Hematocrit
Partial Thromboplastin Time (PTT)
Platelet Count
Prothrombin Time (PT)
Thrombin Time
Urinalysis

MICROBIOLOGY/ SEROLOGY

Gram Stain Smear
Group A Streptococcus Screen
Infectious Mononucleosis Test
Influenza Antigen A&B

CHEMISTRY

Chemistry Panels (or any component):

Acetaminophen
Alcohol
Ammonia
Amylase
Basic Metabolic Panel
B-type Natriuretic Peptide (BNP)
Carbamazepine
Cardiac Troponin I
Comprehensive Metabolic Panel
CSF Glucose
CSF Protein
Digoxin
Electrolyte Panel
Hepatic Function Panel
Iron
Lipase
Lithium
Magnesium
Osmolality
Phenobarbital
Phenytoin (Dilantin)
Pregnancy Test (Qualitative, Urine or Serum)
Pregnancy Test (Quantitative)
Renal Function Panel
Salicylates
TSH
Urine Toxicology Screen
Valproic Acid

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation (with attached Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total Agreement amount, including cost reimbursements, not to exceed \$400,000 for the period March 4, 2014 through June 30, 2017. CONTRACTOR shall not be obligated to perform services in excess of said amounts.
- B. CONTRACTOR will pay for all clinical laboratory interface development costs allowed under State and Federal Law. CONTRACTOR will pay for any upgrade to PHD EHR (GE Centricity) directly related to the system's laboratory interface capabilities as well as any third party vendor software licensing, hardware and ongoing software or user license costs directly related to development and maintenance of the HL7 interface. CONTRACTOR shall not provide compensation for any maintenance, software or ongoing license costs not directly related to the clinical laboratory services.
- C. CONTRACTOR will bill for all third party payer sources, for eligible clinical laboratory services, directly and will not bill PHD or PHD patients that have this coverage. COUNTY will provide complete billing information available at the time of test order to CONTRACTOR to allow CONTRACTOR to do so.
- D. Payment for services and/or reimbursement of costs shall be made upon CONTRACTOR's reasonable satisfactory performance, based upon the scope and methodology contained in EXHIBIT A as determined by COUNTY. It is understood and agreed that fee-for-service charges to COUNTY are only for PHD Special Accounts patients and includes but is not limited to Healthcare for the Homeless, Ryan White, Indigent Care Program and Tuberculosis Program patients for clinical laboratory services performed by CONTRACTOR. Payment for services and/or reimbursement of costs shall be based upon the current State Medi-Cal Fee for Service Rates. STAT pick-up fee shall be \$20 per request for Special Account Patients. CONTRACTOR agrees that these rates are guaranteed for the full term of this Agreement. COUNTY will notify CONTRACTOR of any Special Account Program modifications should they occur in the term of this Agreement.
- E. CONTRACTOR will apply the sliding fee schedule listed in Exhibit B.1 for charges to those patients without third party payer coverage.
- F. Monthly, CONTRACTOR shall submit to the COUNTY designated representative an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number that appears on Page 1 of this Agreement. COUNTY designated representative shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of Exhibit B shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of presentation.
- G. 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 B.1
Sliding Fee Schedule

2013 Gross Income Guidelines by Family Size									
Discount	Family of 1	Family of 2	Family of 3	Family of 4	Family of 5	Family of 6	Family of 7	Family of 8	Percent FPL
100%	\$0- \$11,490	\$11,491- \$15,510	\$15,511- \$19,530	\$19,531- \$23,550	\$23,551- \$27,570	\$27,571- \$31,590	\$31,591- \$35,610	\$35,611- \$39,630	100%
75%	\$0- \$15,856	\$15,857- \$21,404	\$21,405- \$26,951	\$26,952- \$32,499	\$32,500- \$38,047	\$38,048- \$43,594	\$43,595- \$49,142	\$49,143- \$54,689	138%
50%	\$0- \$18,384	\$18,385- \$24,816	\$24,817- \$31,248	\$31,249- \$37,680	\$37,681- \$44,112	\$44,113- \$50,544	\$50,545- \$56,976	\$56,977- \$63,408	160%
25%	\$0- \$22,980	\$22,981- \$31,020	\$31,021- \$39,060	\$39,061- \$47,100	\$47,101- \$55,140	\$55,141- \$63,180	\$63,181- \$71,220	\$71,221- \$79,260	200%

EXHIBIT C
HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)
Revised: May 1, 2013

This Business Associate Agreement ("BAA") supplements and is made a part of the Agreement between COUNTY (referred to herein as "Covered Entity") and CONTRACTOR (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 45 CFR Parts 160 and 164, Subpart C (the "Security Rule"), Subpart D (the "Data Breach Notification Rule") and Subpart E (the "Privacy Rule") (collectively, the "HIPAA Regulations").

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 HITECH 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. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.
- 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 or this BAA, including, but not limited to, administrative, physical and technical safeguards 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, as required by the Data Breach Notification Rule, 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 Subcontractors and Agents.** Business Associate shall ensure that any agents and 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 five (5) business days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.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) business 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) business 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]. The provisions of this subparagraph shall survive the termination of this Agreement.
- 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 subcontractors) 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. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.

- m. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.
- n. **Notification of Possible Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within two (2) business days of any suspected or actual breach of security, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA 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. [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)]
- o. **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.
- p. **Audits, Inspection and Enforcement.** Within ten (10) business 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) business 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. Indemnification

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. Indemnification is conditioned upon the Covered Entity notifying Business Associate in writing promptly upon learning of any claim for which indemnification may be sought hereunder, and will tender the defense of such claim to Business Associate. Business Associate will not be required to indemnify Covered Entity if any claim is settled without Business Associate's written consent.

5. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. Entire Agreement of the Parties

This BAA supersedes any and all prior and contemporaneous business associate agreements 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.

12. 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.

EXHIBIT D
SANTA BARBARA COUNTY NONDISCRIMINATION ORDINANCE

1/23/14

Municode

**Santa Barbara County, California, Code of Ordinances >> CHAPTER 2 - ADMINISTRATION* >> Article XIII.
Unlawful Discrimination, County Contracts >>**

Article XIII. Unlawful Discrimination, County Contracts

Sec. 2-94. Exceptions.

Sec. 2-95. Prohibition of unlawful discrimination in employment practices.

Sec. 2-95.5. Exceptions.

Sec. 2-96. Purchase orders.

Sec. 2-97. Affirmative action officer.

Sec. 2-98. Youth group anti-discrimination.

Sec. 2-94. Exceptions.

The provisions of this article shall not apply to contracts or agreements for the acquisition, exchange or disposition of real property or interests therein, nor to contracts or agreements with the State of California, or its political subdivisions, or with the United States of America.

(Ord. No. 2946, § 1)

Sec. 2-95. Prohibition of unlawful discrimination in employment practices.

The County of Santa Barbara reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) respecting real property, goods and/or services entered into by the County of Santa Barbara including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the county finds that the contractor is discriminating or has discriminated against any person in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical or mental disability, Vietnam era veteran/disabled, age, medical condition, marital status, ancestry, sexual orientation, or other legally protected status. This right of termination extends to contracts entered into by the County of Santa Barbara or by its joint powers, agencies or agents so long as the county obtains the consent of those parties.

Such finding may only be made after contractor has had a full and fair hearing on notice of thirty days before an impartial hearing officer at which hearing contractor may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the county. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, contractor may move in the appropriate court of law for damages and/or to compel specific performance of a contractor or agreement if any of the above procedures are not afforded to the contractor. If contractor is not found to have engaged in unlawful discriminatory practices, county shall pay all costs and expenses of such hearing, including reasonable attorneys' fees, to contractor in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If contractor is found to have engaged in such unlawful discriminatory employment practices, contractor shall pay all such costs, expenses and attorneys' fees.

Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the contractor shall forthwith reimburse the county for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid to contractor under the terms of the contract or agreement.

Nothing in this section 2-95 shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to contractor, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.

With respect to employment discrimination, employment practices shall include, but are not limited to, employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation or selection for training and apprenticeship and probationary periods.

Contractor shall permit access at all reasonable times and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to contractor reasonably prior to the time contractor is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agents of the county. No records or copies of such records may be removed from the premises of contractor, and no disclosure, oral or written, of such record may be made to third parties except as provided within the agreement. Provided, however, that in the event of a hearing to determine whether or not contractor is engaging in unlawful discrimination in employment practices as defined herein, the board of supervisors of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available to the hearing.

Failure to fully comply with any of the foregoing provisions shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the county shall be notified that this chapter applies to their contract or agreement with the County of Santa Barbara.

(Ord. No. 2846, § 1; Ord. No. 2813, § 1; Ord. No. 3015, § 1; Ord. No. 3113, § 1)

Sec. 2-95.5. Exceptions.

Notwithstanding any other provisions in this article, any party contracting with the County of Santa Barbara having an affirmative action program which has been approved within twelve months from the date of the contract by an agency of the federal government shall be deemed to be in compliance with the provisions of this article upon furnishing documentary evidence of such approval satisfactory to the county affirmative action officer. Loss of such approval shall be immediately reported by such party to the county affirmative action officer.

Sec. 2-96. Purchase orders.

Purchase orders shall contain the following clause as grounds for termination of such purchase order.

"If complaint is made that seller is engaging in discriminatory employment practices made

unlawful by applicable state and federal laws, rules or regulations, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this order."

(Ord. No. 140, § 1)

Sec. 2-97. Affirmative action officer.

At the discretion of the county affirmative action officer, he or she shall promptly and thoroughly investigate, or cause to be investigated reports and complaints from whatever source, that any party contracting with the County of Santa Barbara is engaging, or during the term of a contract or agreement with the County of Santa Barbara has engaged, in any unlawful discriminatory employment practices as described in section 2-95 of this Code. If the investigation discloses reason to believe such unlawful discrimination does exist or has existed and the conditions giving rise thereto have not been changed so as to prevent further such unlawful discrimination, and the said party shall not forthwith terminate such unlawful discrimination, take all appropriate steps to prevent a recurrence of such or other unlawful practices, and compensate the person or persons unlawfully discriminated against for any and all loss incurred by reason of such unlawful discrimination, all to the satisfaction of the affirmative action officer, then the affirmative action officer shall cause the matter to be presented for action to the State Fair Employment Practices Commission or the Federal Equal Employment Opportunities Commission, or both, and to any other concerned state or federal agencies or officers.

If and when it has been finally determined by the affirmative action officer, county counsel, or state or federal regulatory agencies that such unlawful discriminatory employment practice has in fact so occurred or are being carried on, then the affirmative action officer shall forthwith present the entire matter to the board of supervisors of the county, together with all damages, costs and expenses related thereto and incurred by county, for appropriate action by the board of supervisors in accord with the intent and purposes of this article and of the affirmative action program of the County of Santa Barbara.

(Ord. No. 140, § 1)

Sec. 2-98. Youth group anti-discrimination.

- (a) Neither the County of Santa Barbara, nor any of its agencies, departments, affiliates, or political subdivisions over which it exercises jurisdiction, shall:
 - (1) Deny any youth group equal access to, or fair opportunity to conduct meetings or other events at, or otherwise utilize any public facility;
 - (2) Deny any youth group use permits or licenses regarding, or otherwise withhold from any youth group permission to use, any public facility; or
 - (3) Otherwise discriminate against any youth group; on the basis of the membership or leadership criteria of such youth group.
- (b) For purposes of this section, a public facility shall include any public forum, limited public forum, public property, or public area including any public building, park, beach, campground, or any other area controlled or operated by the County of Santa Barbara.
- (c) For purposes of this section, a youth group means any group or organization intended to serve young people under the age of twenty-one.

(Ord. No. 140, § 1)