

**Professional Services Agreement
Between the County of San Mateo and
Barry McNamara, M.D.
For Ophthalmology Services**

THIS PROFESSIONAL SERVICES AGREEMENT is entered into by and between the County of San Mateo, San Mateo Medical Center ("County") and Barry McNamara, M.D. ("Contractor").

WITNESSETH:

WHEREAS, County operates health care facilities collectively known as the "San Mateo Medical Center".

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of performing professional services described for the San Mateo Medical Center; and

WHEREAS, pursuant to Government Code 31000, County may contract with independent contractors for the furnishing of such services to or for the County; and

WHEREAS, Contractor desires to provide such services all upon the terms and conditions stated below, and this Agreement is entered into for the purpose of defining the parties' respective rights and responsibilities

NOW, THEREFORE, in consideration of the mutual agreements set out below, the parties agree as follows:

Section 1 -- Contractor's Obligations

1.1 Organizational Status

Contractor represents and warrants that it is either (Check One):

- 1.1.1 An individual health care provider duly licensed, certified, accredited or otherwise duly authorized to practice medicine in the specialty of Ophthalmology, in the State of California.
- 1.1.2 A partnership, professional services corporation or association duly organized and validly existing under the laws of the State of California and authorized to engage in the profession of medicine in the State of California;
- 1.1.3 Other _____

1.2 Contractor's Representatives

- 1.2.1 The term "Contractor" shall include all Contractor's representatives, employees, shareholders, partners, subcontractors, and agents providing services in San Mateo County under this Agreement, i.e. every member of a medical group that contracts with the County shall be considered a "Contractor", for purposes of complying with this Agreement.
- 1.2.2 Where contractor represents more than one individual, contractor will designate a "Lead Contractor". This Lead Contractor will be the contact person for the County when dealing with issues affecting both parties, including, but not limited to, enforcement of this Agreement, in cases where direct discussion with the individual contractor's representative fails to adequately resolve the issue.

1.3 Qualifications

The following indicate qualifications that must be satisfied by each Contractor as a condition of providing services under this Agreement:

- 1.3.1 Must be accepted by the County's Chief Executive Officer, or designee; said acceptance may be withdrawn immediately by the County's Chief Executive Officer, or designee, in his or her reasonable discretion at any time with written notice to Contractor.
- 1.3.2 Shall at all time keep and maintain a valid license to engage in the practice of Ophthalmology in the State of California and Active Medical Staff membership and/or privileges as may be required under the Bylaws of County for Contractor's Representatives to provide the services contemplated by this Agreement.
- 1.3.3 Contractor's representatives shall be certified by the appropriate State recognized Board in California (or eligible for certification by such Board by virtue of having successfully completed all educational and residency requirements required to sit for the Board examinations).
- 1.3.4 Contractor is not currently excluded, debarred or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; nor has Contractor been convicted of a criminal offense.
- 1.3.5 Contractor agrees to participate in the County's Organized Health Care Arrangement (OHCA), as described by the Health Insurance Portability

and Accountability Act of 1996 (HIPAA). Contractors who choose to opt out of the OHCA agree to advise the San Mateo Medical Center Medical Staff Office in writing and will provide their own Notice of Privacy Practice (NPP).

1.4 Services to be Performed by Contractor

In consideration of the payments hereinafter set forth, Contractor, under the general direction of the Chief Executive Officer, or her designee, with respect to the product or results of Contractor's services shall provide medical services as described in **SCHEDULE A**, attached hereto and incorporated by reference herein. Such services shall be provided in a professional and diligent manner.

1.5 Payments

1.5.1 **Maximum Amount** In full consideration of Contractor's performance of the services described in **SCHEDULE A**, the amount that County shall be obligated to pay for services rendered under this Agreement shall not exceed that specified in **SCHEDULE B**.

1.5.2 **Rate of Payment** The rate and terms of payment shall be as specified in **SCHEDULE B**, attached hereto and incorporated herein. Any rate increase is subject to the approval of the Chief Executive Officer, or her designee, and shall not be binding on County unless so approved in writing. Each payment shall be conditioned on the Contractor's performance of the provisions of this Agreement, to the full satisfaction of the Chief Executive Officer, or her designee.

1.5.3 **Time Limit for Submitting Invoices**. Contractor shall submit an invoice for services to County for payment in accordance with the provisions of **SCHEDULE C**. County shall not be obligated to pay Contractor for the services covered by any invoice if Contractor presents the invoice to County more than one hundred eighty (180) days after the date Contractor renders the services, or more than ninety (90) days after this Agreement terminates, whichever is earlier.

1.6 Substitutes

Contractor shall provide at Contractor's sole cost and expense, a substitute for any Contractor who is unable to provide services required under this Agreement. As a condition of providing services under this Agreement, any such substitute shall first be approved by County's Chief Executive Officer, or her designee, and shall otherwise satisfy all qualification requirements applicable to the Contractor,

including, but not limited to, being covered under Contractor's insurance or submitting separate insurance issued by a company under such terms and limitations as County shall reasonably approve.

1.7 General Duties of Contractor

In addition to the services performed in **SCHEDULE A**, Contractor shall perform the following duties:

- 1.7.1 Administrative and Miscellaneous Duties and Responsibilities Contractor will cooperate with the administration of the medical practice. Such cooperation shall include, but not be limited to, the following: maintaining medical records in a timely fashion (including the appropriate use of dictation, or other technology, as required by County), billing, peer review and County's compliance programs. Contractor shall provide appropriate supervision and review of services rendered by physician assistants and other non-physicians involved in the direct medical care of County's patients.
- 1.7.2 Billing and Compliance. Contractor shall prepare such administrative and business records and reports related to the Service in such format and upon such intervals, as County shall reasonably require. Contractor shall not directly submit a billing or statement of charges to any County patient or other entity for services arising from the practice of medicine, nor shall Contractor make any surcharge or give any discount for care provided without the prior written authorization of County. The County has complete authority to assign patients to various Contractors, determine write-offs, and take any other action relating to billing and collection of fees for clinical services. All accounts receivable generated for services rendered by Contractor pursuant to this Agreement are the property of the County. Contractor shall participate in all compliance programs adopted by County. Contractor shall have the right to review any and all billings for his/her services bearing his/her name or Provider Number. Contractor is required to request the correction of any errors including providing a refund to payors if warranted. Contractor agrees to keep accurate and complete records pursuant to **SCHEDULE C**, incorporated by reference herein.
- 1.7.3 Compliance with Rules and Regulations. Contractor agrees to abide by rules, regulations and guidelines of County, as the County may from time to time amend, add or delete rules, regulations or guidelines at County's sole discretion, and such amendment will not affect the enforceability or terms of this Agreement.

1.7.4 Managed Care Contracts. Contractor is obligated to participate in, and observe, the provisions of all managed care contracts which County may enter into on behalf of Contractor for health care services with, managed care organizations including, but not limited to Health Maintenance Organizations (HMOs), Independent Practice Associations (IPAs), Preferred Provider Organizations (PPOs), Medical Service Organizations, (MSOs), Integrated Delivery Systems (IDSs) and Physician-Hospital Organizations (PHOs).

1.7.5 Requirement of ^{Contractor BAM} ~~Pediatric~~ to Notify County of any Detrimental Professional Information or Violation of Contract Rules or Policies
During the term of this Agreement, Contractor shall notify County immediately, or as soon as is possible thereafter, in the event that:

- (A) Contractor's license to practice Ophthalmology in any jurisdiction is suspended, revoked, or otherwise restricted;
- (B) A complaint or report concerning Contractor's competence or conduct is made to any state medical or professional licensing agency;
- (C) Contractor's privileges at any hospital, health care County or under any health care plan are denied, suspended, restricted or terminated or under investigation for medical disciplinary cause or reason;
- (D) Contractor's controlled substance registration certificate (issued by the Drug Enforcement Administration) if any, is being, or has been suspended, revoked or renewed;
- (E) Contractor's participation as a Medicare or MediCal provider is under investigation or has been terminated.
- (F) There is a material change in any of the information the Contractor has provided to County concerning Contractor's professional qualifications or credentials.
- (G) Contractor's conviction of a crime.
- (H) Contractor must also notify the County within thirty (30) days of any breach of this Agreement, violation of any of County's rule or regulation whether by others or by the Contractor himself/herself, or if the Contractor is subject to or participant in any form of

activity which could be characterized as discrimination or harassment.

1.8 Citizenship Duties of Contractor

- (A) Contractor will meet County expectations of outpatient clinic productivity, as determined by relevant standards, adjusted for local conditions.
- (B) Contractor will be physically present in the designated location and prepared to perform designated duties during the entire duration of the relevant work schedule as detailed in **SCHEDULE A**, specifically, will commence work on time, and not leave until duties are complete.
- (C) Contractor will work cooperatively with County designees to optimize work flow, including participating in workflow analysis, appropriate use of scheduling, division of duties, optimal use of clinic staff, and other activities as designated by County.
- (D) Contractor will maintain appropriate medical records including the use of dictation or other technology required by County.
- (E) Contractor will make all reasonable efforts to schedule the provision of services, including, but not limited to, outpatient, operating room, and procedures, in a manner that complies with the County's staffing needs. Elective procedures will be scheduled during routine staffing hours, unless otherwise dictated by patient care or other exceptional circumstances.
- (F) Contractor will attempt to provide two (2) months notice, but under no circumstances shall provide less than two (2) weeks, for non-emergency absences from assigned duties. Notice shall be provided electronically or in writing to all relevant service areas.
- (G) Contractor will make all reasonable efforts to participate in coordination and optimization of services, including but not limited to active participation in Quality Improvement and Utilization Management efforts.
- (H) Contractor will make all reasonable efforts to communicate effectively and coordinate care and services with Primary Care providers, including, but not limited to, direct contact with individual providers where clinically indicated, and participation in Primary Care provider education including presentations at noon conferences.

- (I) Contractor will make all reasonable efforts to comply with County request to staff services at satellite, community-based clinics other than San Mateo Medical Center, provided that total services do not exceed those specified in **SCHEDULE A**
- (J) Contractor will conduct himself/herself with professionalism at all times, which includes, but is not limited to, courteous and respectful conduct towards, and reasonable cooperation with, all County employees.

1.9 Provision of Records For County

Contractor shall furnish any and all information, records and other documents related to Contractor's services hereunder which County may reasonably request in furtherance of its quality assurance, utilization review, risk management, and any other plans and/or programs adopted by County to assess and improve the quality and efficiency of County's services. As reasonably requested, Contractor shall participate in one or more of such plans and/or programs.

1.10 Cooperation With County In Maintaining Licenses

Contractor shall assist County in obtaining and maintaining any and all licenses, permits and other authorization, plus achieving accreditation standards, which are dependent upon, or applicable to, in whole or in part, Contractor's services under this Agreement.

1.11 Contractor's Conflict Of Interest

Contractor shall inform County of any other arrangements which may present a professional, financial, stark law, or any other state or federal conflict of interest or materially interfere in Contractor's performance of its duties under this Agreement. In the event Contractor pursues conduct which does, in fact, constitute a conflict of interest or which materially interferes with (or is reasonably anticipated to interfere with) Contractor's performance under this Agreement, County may exercise its rights and privileges under Section 3.4 below.

1.12 Non-Permitted Uses of County

Contractor agrees not to use, or permit any of Contractor's Representatives to use, any part of the County for any purpose other than the performance of services under this Agreement. Without limiting the generality of the foregoing, Contractor agrees that no part of the premises of County shall be used at any time as an office for private practice and delivery of care for non-County patients.

1.13 No Contract in County Name

Contractor shall not have the right or authority to enter into any contract in the name of County or otherwise bind County in any way without the express written consent of County.

1.14 Regulatory Standards

Contractor shall perform all services under this Agreement in accordance with any and all regulatory and accreditation standards applicable to County and the Service, including, without limitation, those requirements imposed by the Joint Commission on Accreditation of Healthcare Organizations, the Medicare / Medicaid conditions of participation and any amendments thereto.

1.15 Availability of Records For Inspection

As and to the extent required by law, upon written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Contractor shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Contractor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, Contractor agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395x(v)(1) and the regulations thereto. No attorney-client, or accountant-client, or other legal privilege will be deemed to have been waived by County, Contractor or any Contractor's Representative by virtue of this Agreement.

1.16 Professional Standards

Contractor shall perform his or her duties under this Agreement in accordance with the rules of ethics of the medical profession. Contractor shall also perform his/her duties under this Agreement in accordance with the appropriate standard of care for his/her medical profession and specialty.

Section 2 - Change of Circumstances

- 2.1 In the event (i) Medicare, Medi-Cal, or any third party payor or any federal, state or local legislative or regulative authority adopts any law, rule, regulation, policy, procedure or interpretation thereof which establishes a material change in the

method or amount of reimbursement or payment for services under this Agreement, or if (ii) any or all such payors/authorities impose requirements which require a material change in the manner of either party's operations under this Agreement and/or the costs related thereto, then, upon the request of either party materially affected by any such change in circumstances, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstances while preserving the original intent of this Agreement to the greatest extent possible. If, after thirty (30) days of such negotiations, the parties are unable to reach an agreement as to how or whether this Agreement shall continue, then either party may terminate this Agreement upon thirty (30) days prior written notice.

Section 3 - Term and Termination

3.1 Term

This Agreement shall commence on September 1, 2004, (the "Effective Date") and shall continue for ^{two} ~~three~~ year(s). Unless sooner terminated, this Agreement shall expire and be of no further force and effect as of the end of business on the 31st day of August 2006.

3.2 Extension of Term

The term of the Agreement may be extended by mutual written, signed agreement by both parties.

3.3 Termination

This Agreement may be terminated by County at any time upon ninety (90) days written notice to the Contractor.

3.3.1 Automatic Termination

This Agreement shall be immediately terminated as follows:

- (A) Upon Contractor's loss, restriction or suspension of his or her professional license to practice medicine in the State of California;
- (B) Upon Contractor's suspension or exclusion from the Medicare or MediCal Program;
- (C) If the Contractor violates the State Medical Practice Act;

- (D) If the Contractor's professional practice jeopardizes imminently the safety of patients.
- (E) If Contractor is convicted of a crime;
- (F) If Contractor violates ethical and professional codes of conduct of the workplace as specified under state and federal law;
- (G) Upon revocation cancellation, suspension or limitation of the Contractor's medical staff privileges at the County;
- (H) Contractor has a guardian or trustee of its person or estate appointed by a court of competent jurisdiction;
- (I) Contractor becomes disabled so as to be unable to perform the duties required by this Agreement;
- (J) Contractor fails to maintain professional liability insurance required by this Agreement;
- (K) Upon County's loss of certification as a Medicare and/or Medi-Cal provider;
- (L) Upon the closure of County;

3.3.2 Breach of Material Terms

Either party may terminate this Agreement at any time in the event the other party engages in an act or omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the breaching party with not less than thirty (30) days advance written notice specifying the nature of the breach. The breaching party shall then have thirty (30) days from the date of the notice in which to remedy the breach and conform its conduct to this Agreement. If such corrective action is not taken within the time specified, this Agreement shall terminate at the end of the sixty (60) day period without further notice or demand. Upon breach of the terms of this Agreement by an individual contractor's representative, County shall have the option of withdrawing its acceptance of that individual contractor's representative, as described in 1.3.1, without terminating this Agreement. Upon withdrawal of acceptance, contractor must replace said contractor representative as specified in section 1.6 of this contract. Withdrawal of acceptance of an individual

contractor's representative will not, of itself, constitute grounds for termination of this Agreement, by either party.

3.3.3 Patient Records Upon Termination and Notice to Patients

All original patient records shall be property of the County. Upon termination of this Agreement, Contractor shall return any such records as may be in Contractor's possession to County, subject to Contractor's right to copies of records.

Section 4 - Insurance and Indemnification

4.1 Insurance

- A. Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the Chief Executive Officer. Contractor shall furnish the County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

In the event of breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this agreement.

- B. Workers Compensation and Employer Liability Insurance. Contractor shall have in effect during the entire life of this Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provision of Section 3700 of the California Labor Code that require every employer to be insured against liability for Workers Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

C. Liability Insurance. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him while performing work covered by this Agreement from any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

- 1) Comprehensive General Liability Insurance\$ -0-
- 2) Motor Vehicle Liability Insurance.....\$ =0-
- 3) Professional Liability Insurance.....\$1,000,000/3,000,000

If this Agreement remains in effect more than one (1) year from the date of its original execution, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County agreements by giving sixty (60) days notice to Contractor.

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only. Said certificate(s) of insurance is (are) attached hereto and incorporated by reference herein as Attachment II (and III).

4.2 Tail Coverage

If Contractor obtains one or more claims-made insurance policies to fulfill its obligations, Contractor will: (i) maintain coverage with the same company during the term of this Agreement and for at least three (3) years following termination of this Agreement; or, (ii) purchase or provide coverage that assures protection against claims based on acts or omissions that occur during the period of this Agreement which are asserted after the claims-made insurance policy expired.

4.3 Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on accounts of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this Agreement, or (D) any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (E) any other loss or cost, including but not limited to, that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damages for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

Contractor shall indemnify, defend and hold County harmless from and against any and all claims for wages, salaries, benefits, taxes and all other withholdings and charges payable to, or in respect to, Contractor's Representatives for services provided under this Agreement.

County shall indemnify and save harmless Contractor, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on accounts of: (A) injuries to or death of any person, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) any sanctions, penalties or claims of damages resulting from County's failure to comply with the requirements set forth in the Health Insurance Portability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to, that caused by the concurrent active or passive negligence of Contractor, their officers, agents, employees, or servants, resulting from the performance of any work required of County or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damages for which Contractor has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the County to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil

Code.

County shall indemnify, defend and hold Contractor harmless from and against any and all claims for wages, salaries, benefits, taxes and all other withholdings and charges payable to, or in respect to, County for services provided under this Agreement.

Section 5 - Miscellaneous Provisions

5.1 Notice Requirements

Any notice required or desired to be given in respect to this Agreement shall be deemed to be given upon the earlier of (i) actual delivery to the intended recipient or its agent, or (ii) upon the third business day following deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be delivered to the respective addresses set out below, or to such other address as a party shall specify in the manner required by this Section 5.1. The respective addresses are:

If to County: Nancy Steiger, CEO
San Mateo Medical Center
222 W 39th Ave
San Mateo, CA 94403

With Copy to: County Counsel's Office
400 County Center
Redwood City, CA 94063.

If to Contractor: Barry McNamara, M.D.
181 South Palomar Drive
Redwood City, CA 94062

5.2 Entire Agreement

This Agreement contains the entire agreement of the parties hereto and supersedes all prior agreements, contracts and understanding, whether written or otherwise, between the parties relating to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.3 Partial Invalidity

In the event any provision of this Agreement is found to be legally invalid or unenforceable for any reason, the remaining provisions of the Agreement shall

remain in full force and effect provided the fundamental rights and obligations remain reasonably unaffected.

5.4 Assignment

Because this is a personal service contract, Contractor may not assign any of its rights or obligations hereunder without the prior written consent of County. County may assign this Agreement to any successor to all or substantially all, of County's operating assets or to any affiliate of County. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

5.5 Independent Contractor

Contractor and all Contractor's Representatives are performing services and duties under this Agreement as independent contractors and not as employees, agents, partners of, or joint ventures with County. County does retain responsibility for the performance of Contractor and Contractor's Representatives as and to the extent required by law and the accreditation standards applicable to County. Such responsibility, however, is limited to establishing the goals and objectives for the Service and requiring services to be rendered in a competent, efficient and satisfactory manner in accordance with applicable standards and legal requirements. Contractor shall be responsible for determining the manner in which services are provided and insuring that services are rendered in a manner consistent with the goals and objectives referenced in this Agreement.

5.6 Regulatory Requirements

The parties expressly agree that nothing contained in this Agreement shall require Contractor or Contractor's Representatives to refer or admit any patients to, or order any goods or services from County. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct himself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC Section 1320a-7b).

5.7 Alternate Dispute Resolution

The parties firmly desire to resolve all disputes arising hereunder without resort to litigation in order to protect their respective reputations and the confidential nature of certain aspects of their relationship. Accordingly, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be mediated. If mediation is unsuccessful, the parties may take the dispute to

Superior Court in San Mateo County.

5.8 Third Party Beneficiaries

This Agreement is entered into for the sole benefit of County and Contractor. Nothing contained herein or in the parties' course of dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement, including, without limitation, any Contractor's Representative.

5.9 Governing Law

This Agreement shall be governed by the laws of the state of California.

5.10 Amendments

All amendments shall be approved by the Board of Supervisors.

5.11 Non-Discrimination

Contractor shall comply with the non-discrimination requirements described in **SCHEDULE D**, which is attached hereto, and incorporated herein. Contractor shall comply with the County admission and treatment policies which shall provide that patients are accepted for care without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, age, handicap, or political affiliation.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties, to be determined by the County Manager, including, but not limited to:

- i. termination of this Agreement;
- ii. disqualification of Contractor from bidding or being awarded a County contract for a period of up to three (3) years;
- iii. liquidated damages of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per violation;
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of these paragraphs, the County Manager shall have the authority to:

- i. Examine Contractor's employment records with respect to compliance with this paragraph;
- ii. Set of all or any portion of the amount described in this paragraph against amount due to Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within thirty (30) days of such filing, provided that within such thirty (30) days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notifications shall include the name of the complainant, a copy of such complaint, and description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed.

With respect to the provisions of employee benefits, Contractor shall comply with the County Ordinance that prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

5.12 General Standards

Contractor shall maintain its operations in compliance with all applicable laws and rules relating to licensure and certification, including but not limited to, Title 22 of the California Administrative Code, those necessary to participate in the Medicare and Medi-Cal programs under Title VIII and Title XIX, respectively, of the Social Security Act, and those required by the Joint Commission on Accreditation of Healthcare Organizations (AJCAHO). Contractor shall provide satisfactory evidence of such licenses and certificates. Contractor shall inform Hospital of any notice of any incident within its operations that may affect any license or certification held by Contractor.

5.13 Confidentiality of Patient Information

Contractor shall keep in strictest confidence and in compliance with all applicable state and federal law any patient information. Contractor shall not disclose such information except as permitted by law.

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated

thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any federal or county financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance,

In the event of a conflict between the terms of this agreement and state, federal, county or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this agreement.

5.14 Non-Disclosure of Names

Notwithstanding any other provision of this Agreement, names of Patients receiving public social services hereunder are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, Code of Federal Regulations, Section 431.300 et seq. and Section 14100.2 of the California Welfare and Institutions Code and regulations adopted thereunder.

For the purpose of this Agreement, all information, records, data, and data elements collected and maintained for the operation of the Agreement and pertaining to Patients shall be protected by Contractor from unauthorized disclosure.

With respect to any identifiable information concerning a Medi-Cal Patient that is obtained by Contractor, Contractor: (i) will not use any such information for any purpose other than carrying out the express terms of this Agreement (ii) will promptly transmit to DHS and the applicable Medi-Cal plan all request for disclosure of such information; and, (iii) will not disclose except as otherwise specifically permitted by this Agreement, any such information to any part other than DHS and the applicable Medi-Cal Plan, without prior written authorization specifying that the information is releasable until Title 42, CFR, Section 431.300 et seq., Section 14100.2 Welfare and Institutions Code, and regulations adopted thereunder, or as ordered by a court or tribunal of competent jurisdiction and (iv) will, at the expiration or termination of this Agreement, return all such information to DHS and the applicable Medi-Cal Plan or maintain such information according to written procedures sent to Health Plan by DHS and the applicable Medi-Cal Plan for this purpose.

5.15 Disclosure of Records

Contractor agrees to provide to County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed. Contractor shall comply with all provisions of the Omnibus Budget Reconciliation Act of 1980 regarding access to books, documents, and records. Without limiting the foregoing, Contractor shall maintain such records and provide such information to Hospital, and to Government Officials as may be necessary for compliance by Hospital with all applicable provisions of all state and federal laws governing Hospital. Upon request, County and Government Officials shall have access to, and copies of, at reasonable times at the Contractor's place of business (or such other mutually agreeable location in California), the medical records, books, charts, and papers relating to the Contractor's provision of health care services to Patients, the cost of such services, and payments received by the Contractor from Patients (or from others on their behalf) and, to the financial condition of Contractor. Such records described herein shall be maintained at least four (4) years from the end of the Contract year.

All records of Contractor shall be maintained in accordance with the general standards applicable to such book or record keeping and shall be maintained during any governmental audit or investigation.

IN WITNESS WHEREOF, County and Contractor have duly executed this Agreement as of the dates set out beneath their respective signatures.

CONTRACTOR:

(signature)

By: Barry A. Mc Namara

Title: M.D. Ophthalmologist

Date: 9-16-04

COUNTY:

(signature)

By:
Mark Church, President
Board of Supervisors, San Mateo County

Attest:

By _____
Clerk of Said Board

Date: _____

SCHEDULE A
SERVICES

In consideration of the payments specified in Exhibit "B," Contractor shall perform such services described below under the general direction of the Director.

1. Provide Professional services in the Division of Ophthalmology, Department of Surgery, including inpatient, outpatient, and emergency care.
2. Participate in such scheduled coverage of service as is mutually arranged and agreed upon by members of the Department of Surgery under the supervision of the Chief of Surgery.

Contractor shall develop schedule for "On Call," and/or "Emergency Call" status during all other times on Monday through Friday and for twenty-four (24) hours each Saturday, Sunday, or holiday. "On Call" and "Emergency Call" are defined as being available by telephone or pager to the hospital medical staff, nursing supervisor, and administrator on-call as needed. In addition, Contractor must adhere to the guidelines of the San Mateo County Trauma System by being immediately available by phone and must make every reasonable effort to be present at the hospital at the time of the patient's arrival.

It is expressly understood that Contractor and subcontractors for Ophthalmology services are subject to these conditions that all will accept equal scheduling for "On Call" status and that each will be responsible for his/her portion of "On Call" time. All physicians who take calls for Medical Specialty must have San Mateo Medical Center privileges.

3. Contractor shall participate in such teaching and/or training programs as are, or may be, established by the medical staff at San Mateo Medical Center. Each individual's participation in continuing education is documented and considered at the time of reappointment to the medical staff and/or renewal or revision of individual clinical privileges.
4. Contractor shall fulfill those requirements for active staff membership set forth in Articles 3 and 4.2 of the San Mateo Medical Center Medical Staff Bylaws, and maintain such active staff status as a condition of the Agreement.
5. Contractor shall attend regularly and serve without additional compensation on committees responsible for Peer Review activities, Quality Assurance, Utilization Review as outlined in the Medical Staff Bylaws, Rules and Regulations.
6. Contractor shall provide Medical Staff administrative support to hospital and nursing in meeting surgical and anesthesia standards as defined by Joint Commission, Title 22, and other applicable standards.

SCHEDULE B
PAYMENTS

1. Contractor shall be paid at rates set forth to include the complete professional component associated with ophthalmology services.
2. Payment shall be calculated in a manner consistent with reimbursement for ophthalmology services. The source of ophthalmology base units is the current Medicare Resource-Based Relative Value Scale (RBRVS) Relative Value Work Units (RVUs), which is hereby incorporated and referenced herein as Attachment II.
3. Contractor compensation for ophthalmologists by the County will be based on an RVU base work unit value of \$49.83
4. Contract shall be paid monthly an amount equal to \$49.83 multiplied by the number of RVU units performed, and shall be paid no later than the 20th day of the following month.
5. Contractor shall submit a monthly invoice no later than the 5th day of the month. County shall generate and provide to contractor a verification report for RVU unit reconciliation on the 5th of every month. Any discrepancies between Contractor quarterly invoice and County verification report(s) should be resolved by the 10th of the month, following the close of the quarter. Contractor will make best effort to reconcile encounters monthly. County will reimburse Contractor for all RVU units supported by encounter forms submitted up to and including the 10th of the month, following the close of the quarter.
6. Total payment for services under this agreement will not exceed ONE HUNDRED FIFTEEN THOUSAND SIX HUNDRED SIXTY NINE DOLLARS AND THIRTY EIGHT CENTS (\$115,669.38).

SCHEDULE C
Billing Requirements

All Contractors shall be obligated to comply with the following billing provisions:

A. OUTPATIENT

Contractor shall submit to County complete, accurate and timely encounter forms here:

“Complete” shall mean:

- All procedure and diagnosis codes shall be present on form in CPT and ICD9 format
- Contractor signature, date and title is present on form
- Referral Authorization Form (RAF) is completed by Contractor as required by MediCal or HPSM regulations

“Accurate” shall mean:

- E & M CPT codes must be consistent with level of care
- Other procedures codes must be consistent with diagnosis
- Procedures must be consistent with Medicare and MediCal guidelines for medical necessity
- All Contractor services must be supported by documentation in patient Chart

“Timely” shall mean:

- Submission of encounter forms to County within three calendar days from date of service

The County will provide physician encounter forms appropriate to specialties covered under this agreement. The County will also provide, at time of service, encounter forms that will be embossed or have a sticker applied with the following information:

- Medical Record number
- Patient Name
- Date of Birth
- Date of Service
- Patient Number
- Financial Class

County will attach a RAF with encounter form where appropriate.

B. INPATIENT (includes Same Day Surgery and Observation)

Submission to County of complete, accurate and timely charge slips and additional documentation needed for billing:

"Complete" shall mean:

Charge slips shall include:

- Date of Service
- Appropriate CPT code
- Physician signature and title
- Patient name
- Medical Record number

"Timely" shall mean:

- Contractor charge slips are submitted to the County within three calendar days of date of service.

"Additional documentation" shall mean:

- Discharge summary is completed in the time and manner specified in the Medical Staff Bylaws
- Operative notes are complete in the time and manner specified in the Medical Staff Bylaws
- History and Physical is complete in patient chart
- Short Stay/Admission form completed with CPT for all surgeries

SCHEDULE D
Non-Discrimination

Contract between County of San Mateo and Barry McNamara, M.D., hereinafter called "Contractor:"

- a. No person shall, on the grounds of race, color, creed, national origin, religious affiliation or non-affiliation, sex, sexual orientation, marital status, age (over forty (40)), disability, medical condition (including but not limited to AIDS, HIV positive diagnosis, or cancer), political affiliation or union membership be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Agreement.
- b. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this contract. Contractor's personnel policies shall be made available to County upon request.
- c. Contractor shall assure compliance with Section 504 of the Rehabilitation Act of 1973 by submitting a signed letter of assurance (Attachment I) of compliance. Contractor shall be prepared to submit a self-evaluation and compliance plan to County upon request within one (1) year of the execution of this Agreement.

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Barry A. McNamara
Contact Person: Karin Jimenez
Address: 1440 Southgate Ave; Daly City, CA 94015
Phone Number: 650-992-1360
Fax Number: 650-992-8391

II Employees

Does the Contractor have any employees? [] Yes [x] No
Does the Contractor provide benefits to spouses of employees? [] Yes [x] No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- [] Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
[] Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
[] No, the Contractor does not comply.
[] The Contractor is under a collective bargaining agreement which began on (date) and expires on (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature: Barry A. McNamara
Name (Please Print): Barry A. McNamara
Title: M.D. Ophthalmologist
Date: 9-16-04

COUNTY OF SAN MATEO
SAN MATEO MEDICAL CENTER

MEMORANDUM

Date: August 26, 2004
To: Priscilla Morse, Risk Management/ Pony # EPS 163 Fax # 363-4864
From: Tere Larcina, San Mateo Medical Center/Pony # HOS316/Fax # 2267
Subject: Contract Insurance Approval

CONTRACTOR: Barry McNamara, M.D.

DO THEY TRAVEL:

PERCENT OF TRAVEL TIME:

NUMBER OF EMPLOYEES:

DUTIES (SPECIFIC): Contractor will provide professional ophthalmology services to the patients of San Mateo Medical Center.

<u>COVERAGE:</u>	Amount	Approve	Waive	Modify
Comprehensive Liability:				
Motor Vehicle Liability:				
Professional Liability:	<u>\$1,000,000</u>	✓		
Worker's Compensation:				

REMARKS/COMMENTS:

Priscilla Morse

SIGNATURE

Medical Insurance Exchange of California

6250 CLAREMONT AVENUE OAKLAND, CALIFORNIA 94618-1324 TELEPHONE (510) 428-9411 FROM OUTSIDE CALIFORNIA (800) 227-4527

CERTIFICATE OF INSURANCE

As requested, we are pleased to certify that Professional Liability Insurance on a "claims made" basis is in effect for the Insured named herein, subject to the provision of the policy designated.

BARRY A MCNAMARA, M.D.
BARRY A MCNAMARA, M.D. INC.

POLICYHOLDER: **181 S PALOMAR DR**
REDWOOD CITY, CA 94062-3237

POLICY NUMBER: **DR02-005851**

ORIGINAL EFFECTIVE DATE: **JULY 01, 1976**
RETROACTIVE DATE: **JULY 01, 1976**
POLICY EFFECTIVE DATE: **FEBRUARY 01, 2004**
POLICY EXPIRATION DATE: **FEBRUARY 01, 2005**
SPECIALITY: **OPHTHALMOLOGY**
SUB-SPECIALITY: **NO SUBSPECIALTY**

LIMITS OF LIABILITY: **OF AT LEAST**


EACH CLAIM	\$1,000,000	Any one claim or suit or maximum for the results of one injury.
ANNUAL AGGREGATE	\$3,000,000	Aggregate annual maximum for the results of all claims.

1. This Certificate is not an insurance policy and does not amend or alter the coverage afforded by the policy listed on the Certificate
2. Notwithstanding any requirement, term or condition of any contract or other document with respect to which the Certificate is issued, the Insurance afforded by the policy listed on the Certificate is subject to all terms of such policy.

Countersigned: **Medical Underwriters of California**
Attorney-in-Fact

This certificate issued to:

BARRY A MCNAMARA, M.D.

by 

Date **DECEMBER 29, 2003**