

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
PHARMERICA**

THIS AGREEMENT, entered into this _____ day of _____, 2008,
by and between the COUNTY OF SAN MATEO, hereinafter called "County," and
PHARMERICA, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing pharmacy services including medications, IV therapy services, and consultation services, to residents of San Mateo Medical Center (SMMC) Long-Term Care (LTC) Services (including at both the Main Campus, 222 W. 39th Avenue, San Mateo, CA and Burlingame Long-Term Care (BLTC)).

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A: Services

Exhibit B: Payments

Attachment H: HIPAA Business Associate requirements

Attachment I: § 504 Compliance

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in **Exhibit B**, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth herein and in **Exhibit A**.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth herein and in **Exhibit A**, County shall make payment to Contractor based on the rates and in the manner specified in **Exhibit B**. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed NINE HUNDRED AND FIFTY-EIGHT THOUSAND, SIX HUNDRED AND SIXTY-SEVEN DOLLARS (\$958,667).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2008 through June 30, 2010.

This Agreement may be terminated by Contractor, SMMC's Chief Executive Officer or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

County may terminate this Agreement or a portion of the services referenced in the attachments and exhibits, based upon unavailability of federal, state, or county funds, by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County, and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. 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 account of: (i) injuries to or death of any person, including Contractor; (ii) damage to any property of any kind whatsoever and to whomsoever belonging; (iii) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (iv) 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 damage 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 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.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the 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 Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

- A. **Worker's Compensation and Employer's Liability Insurance** Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation, or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.

- B. **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/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by himself/herself 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 be not less than the amount specified below.

Such insurance shall include:

(1) Comprehensive General Liability	\$1,000,000
(2) Motor Vehicle Liability Insurance	\$1,000,000
(3) Professional Liability	\$1,000,000

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.

In the event of the 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.

10. Compliance With Laws; Payment of Permits/Licenses

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, ordinances and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the federal regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in **Attachment H**, 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, state, 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. In the event of a conflict between the terms of this Agreement and federal, state, county, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

A. *Section 504 Applies Only To Contractors Who Are Providing Services To Members Of The Public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to, discrimination in the performance of this Agreement.

- B. *General Non-Discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or be subject to discrimination under this Agreement.
- C. *Equal Employment Opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.
- D. *Violation of Non-Discrimination Provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and shall subject the Contractor to penalties to be determined by the County Manager, including but not limited to:
 - (1) termination of this Agreement
 - (2) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to three (3) years
 - (3) liquidated damages of \$2,500 per violation
 - (4) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under this Agreement or any other Agreement between 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 notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. *Non-Discrimination.* Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance With Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

- A. Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of County, a federal grantor agency, and the State of California.
- B. Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate federal, state and local agencies, and as required by County.
- C. Contractor agrees to provide to County, to any federal or state department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine 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.

14. Merger Clause

This Agreement, including the exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

16. Notices

Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when faxed, deposited in the United States mail, postage prepaid, or when deposited with a private carrier such as FedEx or United Parcel Services, charges prepaid, addressed to:

In the case of County, to:
San Mateo Medical Center
222 W. 39th Avenue
San Mateo, CA 94403
Attn: Sandra Kissoon

In the case of Contractor, to:
PharMerica
32980 Alvarado-Niles Road #836
Union City, CA 94587
Attn: Daniel Hom

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
Adrienne J. Tissier, President
Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

PHARMERICA

Contractor's Signature

Date: _____

EXHIBIT A

SERVICES

In consideration of the payments set forth in **Exhibit B**, Contractor shall provide the following services:

A. Contractor shall provide the following pharmacy services, including medications and IV therapy services, to San Mateo Medical Center (SMMC) Long-Term Care (LTC) Services:

1. Contractor agrees to promptly deliver to County any prescription and nonprescription drugs and supplies within reasonable times and without unreasonable delay, except for circumstances and conditions beyond its control which shall expressly include, but not be limited to, out of stock situations. If for any reason Contractor is unable to deliver requested item(s) within a reasonable time, Contractor shall promptly notify County of its inability to deliver, and shall subsequently, secure an alternative source of supply.

If an order is missed by Contractor and not sent on the appropriate day with the routine deliveries, then the medication will automatically be considered STAT or sent accordingly the next day.

2. Contractor agrees to provide continuous products and services Monday through Friday during normal business hours and shall, in addition, provide emergency service twenty-four (24) hours per day, seven (7) days a week throughout the calendar year. An emergency shall be defined as the lack of availability for administration of any drug ordered by a physician, regardless of reason.

Drugs ordered STAT by the physician that are not available in the facility emergency drug supply shall be available and administered within one (1) hour during normal pharmacy hours. For those hours during which the pharmacy is closed, drugs shall be ordered STAT within two (2) hours. Drug orders shall be available on the same day ordered unless the drug would not normally be started until the next day.

Antibiotics will be delivered within four (4) hours if not available in Emergency Drug Supply.

3. Contractor agrees to bill each resident individually or in the case of a Medi-Cal assistance recipient, to the appropriate state agency in conformity with the usual and customary method of billing.

4. Contractor will provide to County all forms it deems necessary for the proper execution of the drug delivery system. Said forms include, but shall not be limited to drug order and reorder forms, delivery receipt forms, and communication orders.
5. All deliveries, by whatever means, shall be at the expense of Contractor. Routine deliveries will be completed within thirty (30) minutes of agreed-upon delivery times, which are 3:00 p.m. and 8:00 p.m. for SMMC LTC Services, except for circumstances beyond Contractor's control.
6. All telephone calls to Contractor from County, or from County to Contractor shall be made by the most expedient and least expensive method. All long distance toll charges resulting from said telephone calls shall be the responsibility of Contractor.
7. Contractor will, as necessary, make available to County certain materials and equipment which may include, but shall not be limited to, reference books, films, slides, manuals, audio-visual equipment, and training aids. Contractor shall also insure that drug distribution carts are available for use on a continual basis. It is understood and agreed to by County that such materials shall at all times remain the property of Contractor, and upon demand shall be returned to Contractor in their original condition subject to normal wear and tear. However, in the event of termination of this Agreement, County shall be responsible for purchasing the drug distribution carts at their then remaining value.
8. Contractor shall provide County with an appropriate number of Emergency Medication kits, and use the policy which shall conform to all State Board of Pharmacy and Board of Health rules and regulations. It is understood by both parties that said kit and its contents shall remain at the property of Contractor in the event of termination of this contract. It is further understood and agreed upon by both parties that use of an item from this kit shall be pursuant only to a drug order by a licensed physician. County agrees to promptly report the usage of any item from this kit and to facilitate the billing for said items to the appropriate patient. In the event that County fails to report such usage, the cost of replenishing the kit to the approved list of contents shall be borne by County.
9. Applicable Standards. The services performed by Contractor shall conform to the standards of the Joint Commission (Long-Term Care Section), the Department of Health and Human Services, and all other state and federal agencies including but not limited to the State Board of Health, State Board of Pharmacy, and the California Department of Public Health.

Contractor shall obtain and maintain all necessary local, state, and federal licenses and permits required for the operation of Contractor consistent with the above standards. Contractor agrees that its pharmacists shall be registered and qualified to practice as long-term care facility pharmacists. Quality Assurance monitoring will be provided separately through an independent contract.

10. SMMC retains professional and administrative responsibility for the services rendered; however, in no circumstance shall SMMC be liable for the acts or omissions of Contractor, and Contractor is bound in full by the indemnification/hold harmless language of this Agreement.

B. Contractor will provide the following consulting services:

1. Review the drug regimen of each patient at the skilled level of care in SMMC LTC Services at least once each month, and report in writing any irregularity to San Mateo Medical Center's LTC Administrator, Medical Director, Director of Nursing Services, and where appropriate, the individual resident's physician.
2. Serve on SMMC's Long-Term Care Services Quality Improvement Committee.
3. Submit, at least quarterly, a written report to SMMC's Long-Term Care Quality Improvement Committee on the status of SMMC LTC pharmaceutical service and staff performance. Such report shall include, but not be limited to:
 - a. A review and assessment of compliance with any plan of action previously adopted by SMMC's Long-Term Care Quality Improvement Committee.
 - b. A review and ongoing assessment of compliance with all federal, state, or local laws, regulations or rules, and all of SMMC's LTC pharmaceutically-related policies and procedures including, for example, that drugs are dispensed and labeled in compliance with federal and state laws, and provided on a prompt and timely basis.
 - c. Recommendations, if any, for improving the delivery of pharmaceutical services, with the goal of correcting or preventing instances of noncompliance and enhancing the level of patient care in SMMC LTC Services.
4. Prepare and maintain SMMC LTC Service's Pharmacy Policy and Procedure Manual.

5. Assist SMMC LTC Services staff in the accounting, destruction, and reconciliation of unused controlled substances as prescribed by law, rule, or regulation.
 6. Assist SMMC LTC Services administrative staff in establishing and implementing policies and procedures for the safe and effective distribution, control, and use of drugs.
 7. Consult with the LTC Medical Director and any attending physicians regarding the use of formulary drugs as requested by the Facility Administrator.
 8. Participate as needed in SMMC LTC Service's Main Campus facility in-service training program for the licensed nursing staff.
 9. Meet all other responsibilities required of a consultant pharmacist as set forth in federal, state, or local laws, regulations, or rules as enacted or as may be enacted or amended.
 10. Contractor agrees that the following additional services will be provided to SMMC LTC Services. These services include:
 - a. A FAX system for convenient ordering
 - b. Pharmacist consulting services
 - c. Nurse consulting services in medication distribution and other incidental consulting
 - d. Continuing education services
 - e. Access to a toll-free hotline for dietary, medical records, clinical, Medicare, regulatory and reimbursement questions
 11. Contractor shall apprise SMMC of recommendations, plans for implementation, and continuing assessment through dated and signed reports which shall be retained by SMMC for follow-up action and evaluation of performance.
- C. SMMC LTC Services Administrator shall designate the employee(s) responsible for implementing the services contemplated in this Agreement and who shall act as coordinator(s) with Contractor.

EXHIBIT B

PAYMENTS

- A. In consideration of the services provided by Contractor in **Exhibit A**, County shall pay Contractor based on the following fee schedule:
1. County shall pay Contractor for pharmaceuticals provided to residents not covered by Medicare, Part D, at rates established for Medi-Cal patients.
 2. County agrees to notify Contractor as to the status of each resident regarding source of reimbursement for prescription drugs and supplies and in case of a Medi-Cal resident, shall provide to Contractor an appropriate Medi-Cal ID card or P.O.E. sticker on a prompt and timely basis to avoid delays in pharmacy billings. County also agrees that it shall notify Contractor as to changes in status or source of reimbursement on a prompt and timely basis. County shall give Contractor reasonable access to all resident records, facilities, and supplies necessary for the performance of its duties herein, and Contractor agrees that it will furnish to County upon request all reciprocal information relating to the drugs and supplies furnished to County or patients therein.
 3. In all instances where County processes billing and remittance on behalf of Contractor, County agrees to promptly process said claims received from Contractor and to remit the same to Contractor within sixty (60) days of receipt of Contractor's statement without regard to collectability.
 4. In the event of any dispute arising from any claim or bill submitted by Contractor, Contractor shall have access to all reasonable and necessary documents and records that would in the discretion of Contractor tend to sustain its claim. Further, where County is an intermediary in the processing of said claim, County shall promptly furnish to Contractor any information regarding the status of the claim and shall grant to any fiscal agency involved the right to discuss status of the claim with Contractor.
 5. County shall pay for any drugs, supplies, or ancillary equipment purchased on its own account and shall remit payment on same promptly according to the terms extended by Contractor upon receipt of bill from Contractor. The purpose of said drugs, supplies, and equipment is not required by this contract. This amount shall not exceed the limits as set forth in paragraph 2 of this Agreement.

6. County may at its option purchase from Contractor, and Contractor agrees to sell to County, all stock supplies whose use may not be attributed to a single resident.
 7. In the event of the referral of a Medi-Cal pending resident, the County shall have four (4) months to provide proof of eligibility. After this time, Contractor shall bill the resident or Conservator.
 8. Maximum amount for pharmacy services shall not exceed NINE HUNDRED AND FIFTY-EIGHT THOUSAND, SIX HUNDRED AND SIXTY-SEVEN DOLLARS (\$958,667).
- B. For providing consulting services, Contractor shall be paid based on the following:
1. Contractor will be compensated by County for consultant pharmacy services rendered from the first day of a calendar month to the last day of that calendar month ("Billing Period") according to invoices submitted by Contractor to County. Contractor shall be compensated at a rate of THREE DOLLARS AND FIFTY CENTS (\$3.50) per bed per month, based upon invoices submitted for the applicable billing period.
 2. The maximum amount for consulting services will not exceed FIFTY THOUSAND DOLLARS (\$50,000) during the term of this Agreement. County shall have the right to withhold payment if County determines that the quantity or quality of work performed is unacceptable.
- C. The term of this agreement is July 1, 2008 to June 30, 2010. Maximum payment for services provided under this agreement the three-year term will not exceed NINE HUNDRED AND FIFTY-EIGHT THOUSAND, SIX HUNDRED AND SIXTY-SEVEN DOLLARS (\$958,667).