

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
SETON MEDICAL CENTER**

THIS AGREEMENT, entered into this 1st day of January 2009 by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Seton Medical Center, 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 diagnostic and therapeutic services not available at San Mateo Medical Center as described in **Exhibit A**.

**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 and rates

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 ONE MILLION DOLLARS (\$1,000,000).

#### **4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from January 1, 2009, through December 31, 2009.

This Agreement may be terminated by Contractor or the Chief, Health System or 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 County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

#### **7. Hold Harmless**

Each party shall indemnify and save harmless the other party, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) 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 (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of Contractor or 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 Contractor or 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**

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. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability 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 County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **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.
- (2) **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:

(a) Comprehensive General Liability . . . . .	\$1,000,000
(b) Motor Vehicle Liability Insurance . . . . .	\$1,000,000
(c) Professional Liability . . . . .	\$1,000,000 / \$3,000,000

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, the County of San Mateo may, at its option, 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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and all Federal regulations promulgated thereunder, 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.

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.

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 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 of San Mateo 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 subject Contractor to penalties, to be determined by the County Manager, including but not limited to:
  - i) termination of this Agreement
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years
  - iii) liquidated damages of \$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 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 the contract or any other contract 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 30 days of such filing, provided that within such 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. 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 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 Contractor or that 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 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 and Venue**

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. Any dispute

arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District 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:

If to County: Susan Ehrlich, MD, MPP  
Interim Chief Executive Officer  
San Mateo Medical Center  
222 W. 39<sup>th</sup> Avenue  
San Mateo, CA 94403

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

If to Contractor: Daughters of Charity Health System  
c/o Seton Medical Center  
1900 Sullivan Avenue  
Daly City, CA 94015

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

COUNTY OF SAN MATEO

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

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

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

Seton Medical Center

\_\_\_\_\_  
Contractor's Signature

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



## EXHIBIT A

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

### Diagnostic and Tertiary Care Services

- A. In consideration of the payments provided for in **Exhibit B** of this Agreement, Contractor shall provide the full range of its available diagnostic and therapeutic services on a 24 hour/7 days a week basis to medically indigent patients referred in writing by the County of San Mateo, subject to the provision of **Exhibit B**.
- B. In the event that the patient must be hospitalized in Contractor's facility, Contractor's medical staff shall confer with San Mateo Medical Center (SMMC) medical staff to determine if or when a transfer to SMMC is medically appropriate. Medical records of the patient's stay at Contractor's facility shall accompany the patient.
- C. County shall supply appropriate medical information to Contractor concerning patients referred to Contractor.
- D. The services provided must be specifically referred by a member of SMMC's medical staff and approved by SMMC Administration on a referral form provided by County, which will accompany the patient.
- E. Medically indigent patients who are residents of San Mateo County who present at Contractor's facility without being referred in writing by SMMC are expressly excluded from the terms of this Agreement. If a medically indigent patient who is a resident of San Mateo County presents at Contractor's facility without such written referral, Contractor shall contact SMMC's Admitting Department for transfer to SMMC and/or authorization.
- F. In the event of the referral of a Medi-Cal pending patient, County shall have forty-five (45) days to provide proof of eligibility. After this time, Contractor will be reimbursed at the agreed-upon rate.

## **EXHIBIT B**

In consideration of the services provided by Contractor in **Exhibit A**, County shall pay Contractor based on the following fee schedule:

I. Hospital Inpatient Service Reimbursement

County shall pay Contractor the all-inclusive rates per day for admissions as follows:

<b>Service Type</b>	<b>Effective October 1, 2008</b>
Medical/Surgical	\$1,750.00
NICU (UB Rev code 172)	\$1,950.00
NICU (UB Rev codes 173, 174)	\$2,300.00
PICU (all 200 series UB Rev codes)	\$2,300.00
OB Vaginal	\$1,750.00
OB C-Section	\$1,950.00
OB Critical Care	\$2,150.00
ICU Heart/Burn	\$2,150.00
Rehabilitation	\$1,700.00
Admin/Observation	\$ 310.00

II. Contractor Outpatient Services Reimbursement

County shall pay Contractor for those outpatient hospital services, excluding physician services, provided to referred patients, and for which approved claims have been submitted by Contractor at one hundred and twenty-three percent (123%) of the prevailing state Medi-Cal outpatient service reimbursement rates for services rendered. The exceptions to this rate are specifically listed as follows:

Seton Medical Center  
 Cardiac DRG listing  
 Effective January 1, 2009  
 San Mateo Medical Center Contract

Medicare Case rate in effect 1-1-09 \$8,466.72

MSDRG Description - In patient cardiovascular cases	ALOS	Weight	Case Rate
247 PERC CARDIOVASC PROC W DRUG-ELUTING STENT W/O MCC	2.45	2.0390	\$17,263.70
292 HEART FAILURE & SHOCK W CC	6.39	1.0113	\$8,562.79
313 CHEST PAIN	2.15	0.5432	\$4,599.45
287 CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W	3.48	1.0975	\$9,291.91
291 HEART FAILURE & SHOCK W MCC	7.16	1.3391	\$11,338.12
310 CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	2.82	0.6123	\$5,184.57
293 HEART FAILURE & SHOCK W/O CC/MCC	4.60	0.8199	\$6,941.44
246 PERC CARDIOVASC PROC W DRUG-ELUTING STENT W MCC OR	7.83	2.9965	\$25,370.26
234 CORONARY BYPASS W CARDIAC CATH W/O MCC	8.36	4.8337	\$40,925.18
249 PERC CARDIOVASC PROC W NON-DRUG-ELUTING STENT W	2.56	1.7640	\$14,935.19
309 CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	3.57	0.8291	\$7,019.94
251 PERC CARDIOVASC PROC W/O CORONARY ARTERY STENT OR AMI W	2.82	1.7087	\$14,466.85
233 CORONARY BYPASS W CARDIAC CATH W MCC	15.87	6.6755	\$56,519.76
243 PERMANENT CARDIAC PACEMAKER IMPLANT W CC	7.07	2.5483	\$21,575.74
244 PERMANENT CARDIAC PACEMAKER IMPLANT W/O CC/MCC	4.43	2.1180	\$17,932.63
264 OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	8.54	2.5066	\$21,222.42
252 OTHER VASCULAR PROCEDURES W MCC	8.25	2.8392	\$24,038.29
216 CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W CARD	21.10	9.6201	\$81,450.86
236 CORONARY BYPASS W/O CARDIAC CATH W/O MCC	6.50	3.6796	\$31,154.35
315 OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	2.75	1.1720	\$9,923.00
227 CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH W	4.14	5.0218	\$42,518.30
280 ACUTE MYOCARDIAL INFARCTION, DISCHARGED ALIVE W MC	6.71	1.9116	\$16,185.34
228 OTHER CARDIOTHORACIC PROCEDURES W MCC	16.00	7.0888	\$60,018.60
229 OTHER CARDIOTHORACIC PROCEDURES W CC	11.33	5.0709	\$42,934.17
238 MAJOR CARDIOVASC PROCEDURES W/O MCC	4.00	3.1388	\$26,575.48
242 PERMANENT CARDIAC PACEMAKER IMPLANT W MCC	15.33	3.5548	\$30,097.50
248 PERC CARDIOVASC PROC W NON-DRUG-ELUTING STENT W MCC OR	9.00	2.6135	\$22,128.05
253 OTHER VASCULAR PROCEDURES W CC	8.83	2.2538	\$19,081.87
220 CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W	10.20	5.5486	\$46,978.78
230 OTHER CARDIOTHORACIC PROCEDURES W/O CC/MCC	6.40	4.4937	\$38,047.24
282 ACUTE MYOCARDIAL INFARCTION, DISCHARGED ALIVE W	4.60	0.9464	\$8,013.24
221 CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W	5.75	5.2463	\$44,418.95
250 PERC CARDIOVASC PROC W/O CORONARY ARTERY STENT OR AMI W MCC	10.25	2.4870	\$21,056.73

226	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH W MCC	28.00	6.7117	\$56,826.08
235	CORONARY BYPASS W/O CARDIAC CATH W MCC	6.50	5.4047	\$45,759.66
237	MAJOR CARDIOVASC PROCEDURES W MCC OR THORACIC AOR	17.50	4.7848	\$40,511.14
284	ACUTE MYOCARDIAL INFARCTION, EXPIRED W CC	1.50	1.0593	\$8,968.37
307	CARDIAC CONGENITAL & VALVULAR DISORDERS W/O MCC	4.50	0.8224	\$6,963.03
217	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W CARD	39.00	6.9900	\$59,182.37
219	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W	18.00	7.2072	\$61,021.34
223	CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK W	9.00	6.8809	\$58,258.65
224	CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF	8.00	7.9521	\$67,328.20
231	CORONARY BYPASS W PTCA W MCC	9.00	7.2993	\$61,801.13
262	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMEN	1.00	1.0152	\$8,595.41

Out patient cardiac cath or PTCA  
 Brachytherapy  
 Seed implants

Medicare Area 6 RBRVS Fee Schedule  
 \$16,200  
 Seton Medical Center Cost

- III. Rates are exclusive of professional services and are to be separately paid for by County.
- IV. The preceding per diem rates apply to each approved, medically necessary day of service and includes payment for all services rendered during the admission including, but not limited to, pre-admission services for provider within twenty-four (24) hours of admission, room, board, nursing care, surgery and recovery suites, equipment, supplies, laboratory, radiology, pharmaceuticals, and other services incidental to the admission.
- V. The preceding and outpatient surgery rates apply to all services rendered during the surgery including, but not limited to, pre-operative outpatient services within twenty-four (24) hours of the surgery, nursing care, surgery and recovery suites, equipment, supplies, laboratory, radiology, pharmaceuticals, and other services incidental to the surgery.
- VI. Pre-admission services provided within seventy-two (72) hours of admission will be included in the first per diem.
- VII. Per diem rates exclude hospital-based physician fees, which are to be paid for by the County.
- VIII. The services provided must be referred by a member of San Mateo Medical Center's medical staff and authorized by the Case Management Department or Hospital Administration. A valid outside authorized referral form must accompany the patient.

- IX. Contractor shall bill all other payors including, but not limited to, Medi-Cal outpatients, Medicare outpatients, private insurance patients, and “full pay” patients. County shall bear no financial responsibility for such patients.
- X. In the event that a patient referral to Contractor by County under this Agreement is subsequently determined to be eligible for third-party payment, Contractor shall file a claim against third-party payor and County shall bear no financial responsibility for such patient.
- XI. The term of this Agreement is January 1, 2009, through December 31, 2009. In no event shall total payment exceed ONE MILLION DOLLARS (\$1,000,000).