

ENGAGEMENT AND CONTINGENCY FEE AGREEMENT

This Agreement (the "Agreement") is made on February 26, 2010, by and between the County of Santa Clara, California (the "County"), Kiesel, Boucher & Larson, LLP, Williams Kherkher Hart & Boundas, LLP, and Woodfill & Pressler LLP, who are retained as outside counsel (collectively "Special Counsel"). Paul Kiesel, John Boundas, and Erick Rosemond are, respectively, the principal attorneys designated by the law firms to assist the Office of the County Counsel in this litigation.

The County and Special Counsel agree as follows:

I. SCOPE OF SERVICES/CASE HANDLING

A. The County hereby retains Special Counsel to provide legal services to the County for the purpose of seeking, on behalf of the People of the State of California, monetary recovery and other relief, including civil penalties, restitution, disgorgement of profits, and remediation, against GlaxoSmithKline and any related entities (the "Defendants"), in litigation relating to the Defendants' marketing of the diabetes drug, Avandia (the "Litigation").

B. The Santa Clara County Counsel ("County Counsel"), as the chief legal officer of the County, is charged with representing the County in legal proceedings with respect to which it has an interest. County Counsel shall retain final authority over all aspects of the Litigation.

C. As provided herein, Special Counsel is authorized to take all appropriate legal action to prosecute the Litigation and participate in settlement negotiations. County Counsel shall monitor, review, and participate as lead counsel in the prosecution of all aspects of the Litigation. Special Counsel shall consult in advance with and obtain the prior written approval of County Counsel, and provide County Counsel adequate time to review and provide direction concerning all substantive matters relating to the Litigation, including but not limited to, the filing of pleadings and dispositive motions, discovery, selection of consultants and experts, trial, and all questions of litigation strategy including appeal. Status meetings shall be held as requested by County Counsel or Special Counsel.

D. Special Counsel shall provide County Counsel with copies of all material correspondence, pleadings, and discovery requests and responses related to the Litigation.

E. Special Counsel shall communicate with staff from departments of the County through County Counsel unless alternative arrangements are made in advance between Special Counsel and County Counsel, in which case Special Counsel shall copy County Counsel on all communications and provide updates as necessary to enable County Counsel to direct substantive claims in the Litigation.

F. Special Counsel shall provide sufficient resources, including expert witnesses and advisors, attorney time, and capital for payment of Costs (as defined in paragraph II.B below), to prosecute the Litigation faithfully and with due diligence. Legal services under this Agreement shall be performed only by duly-licensed attorneys and other competent personnel under the

supervision and in the employment of Special Counsel or retained by Special Counsel as consultants or experts with the prior written approval of County Counsel.

G. Special Counsel agrees to maintain adequate billing records to support a potential attorneys' fees application. Special Counsel also agrees to maintain adequate Costs records (as defined in paragraph II.B below) necessary to support the proper reimbursement of Costs in the event of a recovery.

H. The parties to this Agreement do not anticipate that other California local governments will join in the prosecution of this Litigation. But in the event that such an event occurs, Special Counsel shall consult with the County and resolve any potential conflicts to the satisfaction of the County before agreeing to represent any other entity or party.

II. CONTINGENCY FEE AGREEMENT

A. The employment of Special Counsel shall be on a contingency fee basis. Specifically, if Special Counsel is successful in obtaining and collecting a recovery – whether by settlement, arbitration award, Court judgment or otherwise – Special Counsel shall receive attorneys' fees in the amount of eighteen percent (18%) of the Net Monetary Recovery as defined in paragraph II.C below (the "Contingency Fee"). The Contingency Fee shall be subject to Court approval, including a lodestar crosscheck, at the time of settlement, arbitration award, Court judgment or other resolution of the Litigation. This fee is not set by law but has been negotiated between the County and Special Counsel. The sole contingency upon which the County shall pay compensation to Special Counsel is a recovery and collection of monies, whether by settlement, arbitration award, Court judgment or otherwise. The County Counsel or the Board of Supervisors of the County of Santa Clara retains final authority over all decisions relating to the settlement or dismissal of Litigation.

In the event this Litigation is transferred for coordinated or consolidated multidistrict litigation ("MDL") proceedings and a common MDL attorneys' fee is imposed, such fee shall be paid out of Special Counsel's attorneys' fees.

B. Costs. Special Counsel may incur certain court costs and other types of expenses in pursuing the Litigation for the County ("Costs"). For the purposes of this Agreement, Costs shall include, but are not limited to: filing fees, fees for service of process, messenger costs, copying charges for copies made by outside copying services, travel expenses as defined in paragraph III.H below, data collection costs, computer research costs, investigator costs, telecommunication costs, witness fees, court reporter fees, transcription fees, court costs, and costs associated with special masters or alternative dispute resolution. Internal copying costs, wages or overtime costs shall not be included as Costs. In addition, if it is necessary to employ expert witnesses, County agrees that Special Counsel may, in its discretion, employ and pay these expert witnesses subject to the County's prior written approval, and that such expenditures shall be included within Costs. In any event, Special Counsel shall obtain the prior written approval of the County to incur any Costs in excess of \$10,000. Special Counsel shall be responsible for coordinating the obtaining of such prior written approval.

If there is a collection of a monetary recovery, County agrees to reimburse Special Counsel for all reasonable Costs out of the monies collected and recovered pursuant to the Litigation. If there is no recovery, Special Counsel shall bear sole responsibility and liability for payment of Costs.

If there is a collection of a monetary recovery but the reasonable Costs of the Litigation exceed the monetary recovery, reasonable Costs shall be reimbursed up to the maximum of the total recovery. In such an event, Special Counsel shall bear sole responsibility and liability for the remaining unreimbursed Costs.

Where Costs are incurred that also benefit other clients of Special Counsel in other similar litigation, only the portion of such Costs fairly and properly allocable to the County shall be claimed as reasonable Costs of prosecuting the Litigation on its behalf.

County shall not reimburse Costs incurred that do not comply with this provision.

C. The term "Net Monetary Recovery" shall include, without limitation, the then present value of any monetary payments and the fair market value of any property or services received, transferred or rendered for the benefit of the County and the People of the State of California by the adverse parties to the Litigation or their insurance carrier(s), excluding any civil penalties, whether by settlement, arbitration award, Court judgment, or otherwise, after reduction of Costs incurred by the County and/or Special Counsel. Net Monetary Recovery shall not include any statutory attorneys' fees paid by the Defendants or any civil penalties. If the Net Monetary Recovery is calculated to be zero or less (e.g., if reasonable Costs exceed the gross recovery by the County), Special Counsel shall receive nothing for its legal services.¹

D. It is anticipated that the County shall seek an order for payment of attorneys' fees and costs should it prevail, in whole or in part, in the Litigation. If the parties agree in settlement to specific payment of attorneys' fees or if any court in the Litigation awards attorneys' fees, such fees shall be paid to Special Counsel to the extent that the award is based on services furnished by Special Counsel; provided that, to the extent that such fees come from the recovery, e.g., under a common fund theory, Special Counsel shall not receive any greater payment than it is entitled to under paragraphs II.A and II.B above. However, if such attorneys' fees do not come from the recovery or the common fund, the fees awarded in addition to and over and above the common fund by the court for Special Counsel's services in the Litigation, shall offset the attorneys' fees payable to Special Counsel pursuant to this Agreement as set forth in paragraphs II.A and II.B above.

¹ In other words, Net Monetary Recovery = Monetary Recovery (excluding statutory attorneys' fees and civil penalties) - Costs. For example, if \$100,000 is recovered (excluding attorneys' fees and civil penalties) as a result of the Litigation, and if Costs incurred by the County and Special Counsel amount to \$30,000, the Net Monetary Recovery would then be \$70,000, with the contingency fee paid as a percentage of \$70,000. On the other hand, if the Costs incurred by the County and Special Counsel amount to \$150,000, Special Counsel shall receive nothing for its legal services.

In the event that the Court in the Litigation makes an award of attorneys' fees in addition to the monetary recovery, then such award shall offset the attorneys' fees payable to Special Counsel. If the amount of attorneys' fees awarded by the Court is less than the Contingency Fee, Special Counsel shall receive as a reasonable fee the Contingency Fee in lieu of the attorneys' fees award, and the County shall retain the amount of the attorneys' fees awarded by the Court. If the amount of the attorneys' fees awarded by the Court is greater than the Contingency Fee, then Special Counsel shall retain the full amount of attorneys' fees awarded by the Court in lieu of the Contingency Fee, with the County retaining an award of attorneys' fees that is attributable to the County Counsel's time spent prosecuting this Litigation.²

E. County Counsel and Special Counsel are aware that defendants in other litigation have previously challenged and sought to invalidate contingency fee arrangements between public entities and outside counsel in the context of public nuisance suits. County Counsel and Special Counsel believe that any such challenges lack merit and would be inapplicable to this Agreement in any event. County Counsel and Special Counsel agree that this contingent fee agreement is valid. However, in the event that this contingent fee agreement is found to be invalid, Special Counsel agrees to continue to represent the County and to incur Costs with the understanding that Special Counsel shall be paid attorneys' fees and reimbursed for Costs only to the extent that they are awarded by the Court for Special Counsel's services or otherwise recovered by the County as reasonable fees and Costs for Special Counsel's services.

F. In the event that the Litigation is resolved by settlement under terms involving the provision of goods, services or any other "in-kind" payment, County Counsel agrees to seek, as part of any such settlement, a mutually-agreeable monetary settlement of attorneys' fees and Costs. Otherwise, Special Counsel shall be entitled to the Contingency Fee based upon the reasonable value of the "in-kind" payment. County Counsel agrees to consult with Special Counsel prior to making a recommendation to the Santa Clara County Board of Supervisors regarding settlement or dismissal of legal proceedings. However, the County's Board of Supervisors retains final authority over any settlement decision.

G. Special Counsel agrees to use its best efforts to recover Special Counsel's fees and Costs from Defendants rather than from any recovery. Should any nationwide resolution of Avandia litigation include this Litigation and provide a fund to compensate plaintiffs' counsel such as Special Counsel for the services rendered on behalf of the County and for services that furthered the overall litigation effort against the pharmaceutical manufacturers and related entities, Special Counsel shall use its best efforts to recover attorneys' fees from Defendants. Special Counsel also agrees to use its best efforts to obtain its attorneys' fees from any nationwide fund rather than from the recovery. Any attorneys' fees recovered by Special Counsel from such a fund for services provided by Special Counsel to the County shall be

² Thus, by way of example only: If the Net Monetary Recovery is \$100,000, the fee payable to Special Counsel shall be \$18,000. If Special Counsel is awarded \$10,000 in attorneys' fees by application to the Court in addition to the Net Monetary Recovery, then Special Counsel shall receive \$18,000 based upon the contingency fee calculation, with the County retaining the \$10,000 fee award. If, on the other hand, Special Counsel is awarded \$20,000 by the Court, then Special Counsel shall receive nothing from the Net Monetary Recovery.

deducted from any fees payable to Special Counsel pursuant to paragraphs II.A and II.B of this Agreement.

H. The Contingency Fee shall be apportioned between or among Special Counsel as follows: one-third to Kiesel Boucher & Larson, L.L.P., one-third to Williams Kherkher Hart & Boundas, L.L.P., and one-third to Woodfill & Pressler, L.L.P.

In the event of a dispute between and among Special Counsel relating to the apportionment of the Contingency Fee, the full amount of the disputed attorneys' fees shall be placed in an escrow account to be released only after resolution of the dispute between and among Special Counsel, and the undisputed portion will be distributed appropriately. Special Counsel shall resolve any fee dispute independently between and among themselves and the undisputed portion of any monetary recovery shall be deposited into a separate trust account created by Special Counsel for disbursement in accordance with the provisions of this Agreement. Special Counsel shall not interfere with or place any restrictions on the undisputed portion of the recovery.

I. All monies recovered by settlement, arbitration award, Court judgment or otherwise, and any other proceeds resulting from this Litigation, shall be deposited into a separate trust account created by Special Counsel for disbursement in accordance with the provisions of this Agreement, subject to the direction of the Office of County Counsel. Special Counsel shall be responsible for the administration and management of claims and for any associated costs relating to claims management and administration, subject to the direction of the Office of County Counsel.

III. GENERAL REQUIREMENTS

A. Performance by Special Counsel. In the performance of this Agreement, Special Counsel shall provide only those services which are necessary to carry out work for the County in an efficient and effective manner. Special Counsel shall avoid unnecessary duplicate efforts on the part of Special Counsel and Special Counsel's partners, associate attorneys, and staff members. Intra-office conferences are acceptable where such conferences reduce the compensation paid or reimbursement made for related, actual, reasonable and necessary Costs to Special Counsel.

Special Counsel shall prepare and send status reports to the County Council on a reasonable schedule to be given by the County Council or his designee.

Special Counsel also shall provide the following services as part of its representation at no additional cost:

- (a) Staff briefings with County agencies and related duties required by the County in establishing and maintaining a comprehensive risk management program directed at minimizing claims liability exposure of the County; and
- (b) In-house training for County Council and/or other County departments regarding areas of the Special Counsel's legal specialty.

B. Payment and Record-keeping. Payment of compensation for services provided and reimbursement for Costs incurred which are described in paragraphs II.A and II.B of this Agreement shall be made by County only if Special Counsel is successful in obtaining and collecting a recovery as specified in this Agreement. Special Counsel shall maintain adequate billing records to support an attorneys' fees application. Such billing records should reflect the necessary information, including but not limited to number of hours worked and level of attorney expertise, to justify a full award of fees sought, to seek a lodestar multiplier and to permit pro rata attribution of fees between Special Counsel and County Counsel. Special Counsel also shall maintain adequate Costs records to support the reimbursement of Costs in the event of a recovery.

C. Term of Agreement. This Agreement shall commence on February 26, 2010 and shall continue in full force and effect through the resolution of the Litigation, unless it is terminated by either or both parties as provided in this Agreement.

D. Termination For Convenience. The County may terminate this Agreement at any time, either in whole or in part, by giving seven (7) days written notice specifying the effective date and scope of such termination. Upon date of termination, all rights, powers, privileges and authority granted to Special Counsel under this Agreement shall cease, and Special Counsel shall have the duties provided in paragraph II.G below.

E. Termination For Cause. The County shall have the right to terminate this Agreement after written notice to Special Counsel and after the expiration of any cure period provided for below, upon the occurrence of any of the following events of default:

- (a) Failure of Special Counsel to perform any covenant or obligation set forth in this Agreement or any other agreement with the County;
- (b) An attempt by Special Counsel to assign, delegate or subcontract without County's consent as provided herein;
- (c) Failure by Special Counsel to maintain insurance as required under this Agreement;
- (d) Filing by or against Special Counsel of any petition for bankruptcy, any assignment by Special Counsel for the benefit of creditors, the levy of a writ of attachment or execution against Special Counsel's property or the appointment of a receiver for Special Counsel or Special Counsel's property.

Except as otherwise provided in this Agreement, Special Counsel shall not be in default hereunder unless Special Counsel fails to correct such default within a period of ten (10) days after written notice given by County to Special Counsel identifying the default. Notwithstanding the foregoing, if a default cannot be cured within such ten-day period, Special Counsel shall not be in default hereunder if and for so long as Special Counsel shall, to the County's satisfaction, diligently and in good faith, have commenced to remedy the default within such ten-day period, shall prosecute to completion with diligence and continuity the remedying of default to the County's satisfaction, and shall remedy such default within a reasonable time to County's satisfaction. In the case of a notice of default to Special Counsel, no new work shall be

arising out of or relating to this Agreement or the performance or breach thereof. County's liability under this Agreement shall be limited to the payment of compensation provided for in paragraph II.A and reimbursement of Costs provided for in paragraph II.B of this Agreement.

L. Conflict of Interest. Special Counsel promises, covenants, and warrants that the performance of its services and representation to County under this Agreement shall not result in a conflict of interest as that term is used in the Rules of Professional Conduct of the State Bar of California. In the event of a conflict of interest or potential conflict, Special Counsel must disclose such conflict to the County Counsel and shall request the County to waive such conflict on a case-by-case basis.

Should it be discovered that any member or associate of Special Counsel at one time represented the Defendants, Special Counsel shall identify that individual and erect an appropriate ethical wall. Special Counsel shall not represent a party involved in a claim, dispute or transaction of any kind which would create a conflict of interest for Special Counsel or the County unless and until Special Counsel have informed County Counsel of the proposed representation and received written approval to proceed. Special Counsel represents and warrants that it is familiar with provisions of Government Code of the State of California sections 87100 *et seq.* & 1090, and certifies that it does not know of any facts which constitute a violation of those sections.

M. Relationship of Parties; Independent Contractor. Special Counsel shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the County. None of the provisions of this Agreement is intended to create, nor shall any provision be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party shall have the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as explicitly provided herein. Special Counsel shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. No person performing the work or services described herein shall be considered an officer, agent, servant or employee of the County, nor shall any such person be entitled to any benefits available or granted to employees of the County.

N. Assignment; Subcontracting. The services to be performed by Special Counsel are personal in character. Accordingly, Special Counsel is prohibited from: (1) assigning or subcontracting this Agreement; or (2) delegating any duties or obligations hereunder in any manner whatsoever, either voluntarily or by operation of law, unless County first approves in writing such assignment, subcontract or delegation by written instrument executed and approved in the same manner as this Agreement. County may give or withhold such approval in its sole and absolute discretion. Any purported assignment or subcontract by Special Counsel in violation of these restrictions will confer no rights on any other party and will, at County's sole option, be void.

O. Nondiscrimination. Special Counsel shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Special Counsel shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Special Counsel discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

P. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

Q. Integrated Agreement. This instrument, including the exhibits attached hereto, which are made a part of this Agreement, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend this Agreement shall constitute the complete and exclusive statement of its terms and no extrinsic evidence whatsoever, including prior drafts hereof and changes therefrom, may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

R. Amendment. Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the parties hereto or except as otherwise expressly provided herein.

S. Non-Waiver of Rights. No failure by County to insist upon the strict performance of any obligation of Special Counsel under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, without regard to the length of time for which such failure continues, and no acceptance of any monies, shall constitute a waiver of such breach or of County's right to demand strict compliance with such term, covenant or condition of this Agreement. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by County hereunder shall not relieve Special Counsel of any obligation to secure the consent of County in any other or future instance under the terms of this Agreement.

T. Contracting Principles Provisions. This contract is a Type I service contract, subject to the Resolution of Contracting Principles adopted by the Board of Supervisors on October 28, 1997. Accordingly, Special Counsel shall comply with all of the following:

(a) Special Counsel shall, during the term of this contract, comply with all applicable federal, state, and local rules, regulations, and laws.

(b) Special Counsel shall maintain financial records adequate to show that County funds paid, or any fee or costs paid or anticipated to be paid, under the contract were used for purposes consistent with the terms of the contract. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims, if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this contract.

The failure of Special Counsel to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the County, constitute grounds for the termination and/or non-renewal of the contract. Special Counsel shall be provided reasonable notice of any intended termination or non-renewal on the grounds of noncompliance with this Section, and the opportunity to respond and discuss the County's intended action.

U. Protocol. The protocol to be followed by Special Counsel in providing services under this Agreement is set forth in Exhibit A, attached hereto and incorporated herein by this reference.

V. Indemnification and Insurance. The indemnification and insurance requirements for Special Counsel are set forth in Exhibit B, attached hereto and incorporated herein by this reference.

W. Pro Bono Legal Services Requirement. Special Counsel certifies that Special Counsel shall make a good faith effort to provide at least 30 hours of pro bono legal services during each year of the Agreement multiplied by the number of full-time attorneys in the firm in conformance with Policy No. 5.17 of the County Board of Supervisors and comply with all additional terms of the Policy as set forth in Exhibit C, attached hereto and incorporated herein by this reference. The number of hours shall be prorated on a calendar day basis for any contract period that is less than a full year.

X. HIPAA Compliance. Special Counsel will comply with the Business Associate Provisions as set forth in Exhibit D, attached hereto and incorporated herein by this reference.

Y. County No-Smoking Policy. Special Counsel and its employees, agents and subcontractors, shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

Z. Notices. All notices required by this Agreement shall be in writing and shall be deemed to have been duly given only if delivered personally or deposited in the United States mail, postage prepaid, return receipt required, addressed to the other party at the address or addresses set forth below or at such other address as the party may designate in writing in accordance with this section.

To COUNTY:

Tamara Lange
Lead Deputy County Counsel
Office of County Counsel
County of Santa Clara
70 West Hedding Street, 9th Floor East Wing
San Jose, CA 95050
T: (408) 299-5900
F: (408) 292-7240

To SPECIAL COUNSEL:

Paul R. Kiesel, Esq.
Kiesel Boucher & Larson, LLP
8648 Wilshire Blvd.
Beverly Hills, CA 90211
T: (310) 854-4444
F: (310) 854-0812

AA. Interpretation. The captions preceding the sections of this Agreement have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Agreement. This Agreement has been negotiated at arm's length and between parties sophisticated and knowledgeable in the matters contained herein. This Agreement shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement. Provisions in this Agreement relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or County holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words will not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

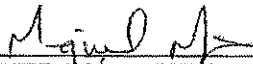
BB. Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. However, notwithstanding anything to the contrary herein, if the County determines a finding of illegality adversely affects the basic consideration hereunder, County may, at its option, terminate this Agreement.

CC. Successors and Assigns. Subject to the provisions of this Agreement restricting Special Counsel's right to assign and subcontract, the terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of County and Special Counsel and, except as otherwise provided herein, their personal representatives, successors and assigns.

DD. Survival. Termination, expiration or cancellation of this Agreement shall not affect any provision of this Agreement which expressly states it shall survive termination, expiration or cancellation hereof.

The parties have caused this Agreement to be executed by their duly authorized representatives.

COUNTY OF SANTA CLARA

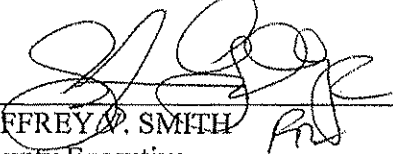

MIGUEL MARQUEZ
Acting County Counsel
Date: 05-03-10

APPROVED AS TO FORM
& LEGALITY

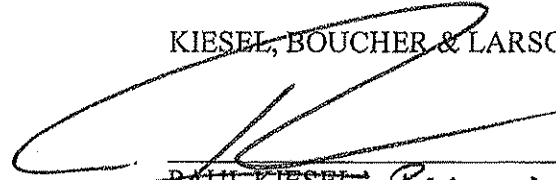

TAMARA LANGE

Lead Deputy County Counsel
Date:

OFFICE OF THE COUNTY EXECUTIVE


JEFFREY W. SMITH
County Executive
Date:

KIESEL, BOUCHER & LARSON


PAUL KIESEL
Date: 2/26/10

WILLIAMS KHERKHER

JOHN T. BOUNDAS

Date:

WOODFILL & PRESSLER

G. ERICK ROSEMOND
Date:

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COUNTY OF SANTA CLARA

KIESEL, BOUCHER & LARSON

MIGUEL MÁRQUEZ
Acting County Counsel
Date:

PAUL KIESEL
Date:

APPROVED AS TO FORM
& LEGALITY

WILLIAMS-KHERKHER

TAMARA LANGE

JOHN T. BOUNDAS

Lead Deputy County Counsel
Date:

Date: 2-26-10

OFFICE OF THE COUNTY EXECUTIVE

WOODFILL & PRESSLER

JEFFREY V. SMITH
County Executive
Date:

G. ERICK ROSEMOND
Date:

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MIGUEL MÁRQUEZ
Acting County Counsel
Date:

PAUL KIESEL
Date:

APPROVED AS TO FORM
& LEGALITY

WILLIAMS KHERKHER

TAMARA LANGE

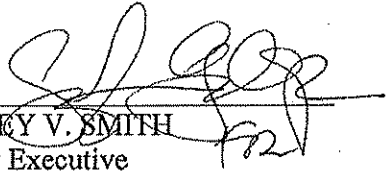
JOHN T. BOUNDAS

Lead Deputy County Counsel
Date:

Date:

OFFICE OF THE COUNTY EXECUTIVE

WOODHILL & PRESSLER



JEFFREY V. SMITH
County Executive
Date:



G. ERICK ROSEMOND
Date: 2/26/2010

**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA**

70 West Hedding Street, 9th Floor
San Jose, California 95110-1770
(408) 299-5900
(408) 292-7240 (FAX)



Miguel Márquez
ACTING COUNTY COUNSEL

Winifred Botha
Orry P. Korb
Lori E. Pegg
ASSISTANT COUNTY COUNSEL

EXHIBIT A

COUNTY OF SANTA CLARA

PROTOCOL FOR OUTSIDE COUNSEL

The County of Santa Clara expects our outside counsel to display the highest degree of professionalism and ethical conduct and to provide the County and its departments with high quality, cost effective legal representation.

Communication

All matters referred to you must be handled in collaboration with the County's Office of the County Counsel and with the Employee Services Agency, Insurance and Claims Division (ESA) where applicable. Communication is crucial. The County and its involved employees must be fully informed at all times. We expect outside counsel to reply promptly and completely to all our inquiries and requests.

Conflict of Interest

We expect counsel to be free of conflicts of loyalty or interest. Please check immediately for any such actual or potential conflicts arising from your representation of the County and advise us immediately of any such conflict or potential conflict. Also, we expect our counsel to advise us if they are on any Boards or organizations which may consider filing litigation against the County.

Staffing

We expect to be consulted in determining which individuals will work on a matter for us. The County will not pay for learning time that may result from any staffing changes, as we do not believe that it is appropriate to pay for the training of your personnel. Also, in order to avoid duplication of effort and to minimize legal fees, we expect strict limits on the number of attorneys and paralegals attending meetings, depositions, or court proceedings. In most instances, only one attorney should be present at any such meeting or proceeding. In addition, intra-office conferences and meetings will be viewed skeptically and should be kept to a bare minimum.

Strategy

We do not expect to pay for projects within matters that we have not approved in advance. In significant cases, we expect you, in collaboration with the County Counsel or designee, to develop a comprehensive strategy for the handling of the matter. We expect to be notified immediately of any circumstances which lead you to believe that any such jointly developed strategy should be materially modified. In addition, we will expect you to review, and where appropriate, update this jointly-developed strategy with us quarterly.

Legal Research

To avoid duplication of effort and keep the cost of legal research to a minimum, we request that you discuss significant research projects with us prior to commencing the work. We do not believe it appropriate to pay legal fees for research on basic issues of law or government immunities, especially where outside counsel has been hired for a specific area of expertise.

Every internal memorandum bearing on our representation should be submitted to us immediately, without waiting for a request, in the form in which it was prepared for your internal use. Do not spend any time putting such documentation in any special form for us. We would prefer receiving such documents both in hard copy and in PDF, MS Word, or WordPerfect format, if available.

Settlements

Any settlement must be approved by the appropriate adjuster, settlement committee, or the County's Board of Supervisors. You may not represent to opposing counsel or to the Court that you are settling any matter without such approval.

Media

Any media inquiry relating to any matter should be referred immediately to the County Counsel. Outside counsel are specifically requested not to make statements to the media on behalf of the County without prior approval of the County Counsel.

5.17 PRO BONO POLICY FOR CONTRACT PROVIDERS OF LEGAL SERVICES (Adopted 10-29-02)

- (A) A contract for legal services with the County shall include a certification by the contracting firm that the firm agrees to make a good faith effort to provide at least 30 hours of pro bono legal services, during each year of the contract, multiplied by the number of full time attorneys in the firm. The number of hours shall be prorated on a calendar day basis for any contract period that is less than a full year.
- (B) For the purpose of this policy, pro bono legal service means:
- (1) provision of legal services without fee or expectation of fee:
 - (a) to low income individuals, or
 - (b) to charitable, civic, community, governmental or educational organizations in matters that are designed primarily to address the needs of low income individuals;
 - (2) provision of legal services without fee or with substantially reduced fee to groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or
 - (3) participation in activities without fee to improve the law, the legal system or the legal profession.
- (C) Contracting firms are encouraged to provide pro bono legal services through the Pro Bono Project (which provides pro bono legal services to low income individuals with civil disputes in the County of Santa Clara), or to individuals or organizations within the County of Santa Clara.
- (D) Each contracting firm shall provide the County Counsel with a report on the firm's pro bono activities within 30 days of the end of each contract year, and when submitting the firm's final invoice to the County. The report shall include the number of full time attorneys in the firm, the number of pro bono hours provided by the firm, and, if appropriate, the nature of the pro bono legal services provided.
- (E) If a contracting firm fails to make a good faith effort to meet the requirements of this policy, the failure may be considered by the County in determining whether to renew the firm's existing contract, or whether to award the firm any future contract.
- (F) This policy is not applicable to contracts with a maximum amount payable of less than \$50,000 for each year of the contract.
- (G) This policy is not applicable to contracts with, or appointments made by the judiciary of, an attorney, law firm, or organization for the purpose of providing legal representation to low or middle-income persons, in either civil, criminal, or administrative matters.

EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT

WHEREAS, County of Santa Clara ("County" or "Covered Entity") is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information ("PHI") to Special Counsel, which is a "Business Associate" pursuant to the terms of the Agreement and this amendment ("Business Associate Agreement" or "BAA"); and.

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable law; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in this provision of the Agreement have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, 42 USC §§ 1320d et seq. ("HIPAA") and the implementing regulations and with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

Privacy Breach: Any reported, suspected, actual or alleged acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

Business Associate – A person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.

Electronic Health Record shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.

Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

Protected Health Information or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

Protected Information shall mean PHI provided by Santa Clara County to Business Associate or created or received by Business Associate on Santa Clara County's behalf.

Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

Unsecured PHI shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

II. Duties & Responsibilities of Business Associate

a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Contract and as permitted under the Contract and Addendum. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Contract and as permitted under the Contract and Addendum. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so

disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information within 10 calendar days of discovery, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by CE to Business Associate for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 10 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]. The breach notice must contain: (1) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known, (2) a description of the types of PHI that were involved in the breach, (3) any steps individuals should take to protect themselves from potential harm resulting from the breach, (4) a brief description of what the business associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against further breaches, and (5) contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website or postal address. [45 C.F.R. Section 164.410] Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

- f. **Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Electronic PHI.** If Business Associate receives, creates, transmits or maintains EPHI on behalf of Covered Entity, Business Associate will, in addition, do the following:
- (1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of Covered Entity.
 - (2) Document and keep these security measures current and available for inspection by Covered Entity.
 - (3) Ensure that any agent, including a subcontractor, to whom the Business Associate provides EPHI agrees to implement reasonable and appropriate safeguards to protect it.
 - (4) Report to the Covered Entity any Security Incident of which it becomes aware. For the purposes of this Agreement, Security Incident means, as set forth in 45 C.F.R. section 164.304, "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system."
- i. **Amendment of PHI.** Within ten (10) days of receipt of a request from Santa Clara County for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Santa Clara County for amendment and incorporate any such amendment to enable Santa Clara County to fulfill its obligations under the Privacy Rule. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Santa Clara County in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity.
- j. **Accounting Rights.** Promptly upon any disclosure of Protected Information for which Santa Clara County is required to account to an individual, Business Associate and its agents or

subcontractors shall make available to Santa Clara County the information required to provide an accounting of disclosures to enable Santa Clara County to fulfill its obligations under the Privacy Rule, and the HITECH Act, as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. Accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent Business Associate maintains an electronic health record and is subject to this requirement.

At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Santa Clara County in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Agreement.

- k. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Santa Clara County and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule. Business Associate shall provide to Santa Clara County a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- l. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- m. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
- n. **Breach Pattern or Practice by Covered Entity.** If the Business Associate knows of a pattern of activity or practice of the Santa Clara County that constitutes a material breach or violation of the Covered Entity's obligations under the Contract or Addendum or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. Business Associate shall provide written notice to Santa Clara County of any pattern of activity or practice of the Santa Clara County that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with Santa Clara County to

discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

- o. Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Santa Clara County to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Santa Clara County shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Santa Clara County shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Santa Clara County has access during the course of such inspection; and (iii) Santa Clara County shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate .

The fact that Santa Clara County inspects, or fails to inspect, or has the right to inspect, Business Associate 's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate 's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Contract or Addendum, Business Associate shall notify Santa Clara County within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

III. Termination

- a. Material Breach.** A breach by Business Associate of any provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. Judicial or Administrative Proceedings.** Santa Clara County may terminate the Contract, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Santa

Clara County elects destruction of the PHI, Business Associate shall certify in writing to Santa Clara County that such PHI has been destroyed.

IV. General Provisions

- a. **Indemnification.** In addition to the indemnification language in the Agreement, Business Associate agrees to be responsible for, and defend, indemnify and hold harmless the County for any breach of Business Associate's privacy or security obligations under the Agreement, including any fines and assessments that may be made against SCVHHS or the Business Associate for any privacy breaches or late reporting.
- b. **Disclaimer.** The County of Santa Clara makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract of Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Santa Clara County must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information.

Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Santa Clara County may terminate the Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Santa Clara County pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

- d. **Assistance in Litigation of Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Contract or Addendum, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity,

Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- f. **Effect on Contract.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.
- g. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.
- h. **Survivorship.** The respective rights and responsibilities of Business Associate related to the handling of PHI survive termination of this Agreement.

CHECKLIST FOR STANDARD AND NON-STANDARD SERVICE AGREEMENTS

Agreements Will not be Processed Without a Completed Checklist

This Checklist is an internal County document; it is not a part of the agreement.

AGENCY/DEPARTMENT: Office of the County Executive

PREPARED BY: Claudia Ericksen, Mgmt. Analyst, Office of the County Counsel
(Name/Phone)

CONTRACTORS NAMES: Kiesel, Boucher & Larson, LLP; Woodfill & Pressler, LLP; Williams, Kherkher, Hart, & Boundas, LLP (Joint Agreement)

- Agreement is not valid until signed by the Director of Procurement and/or those authorized by the Board -

DEPT - A checkmark in the DEPT box indicates that the Department preparer has reviewed the Agreement and determined that it is complete and that all required documents have been attached. The Department preparer has verified, in accordance with County Ordinance Code A34-80, that this contract meets the limit of \$100,000 or less, per fiscal year, per budget unit, per contractor; or \$500,000 or less if it is related to a current or past acquisition of one or more technology products, and County Counsel has approved it as to form and legality.
OBA - A shaded box under Office of Budget and Analysis (OBA) indicates an area to be reviewed by an OBA Analyst to determine that the item is sufficient to meet County requirements.
PROC (Procurement) - A shaded box under Procurement indicates an area to be reviewed by a Procurement Buyer to determine that the item meets County contract and solicitation requirements.
NA - A checkmark in the NA box means that the item is not applicable in this case.

	DEPT	OBA	PROC	NA	COMMENTS
<u>SECTION I: GENERAL INFORMATION</u>					
Agency/Department Information	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Start/End Dates	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>SECTION II: CONTRACT BILLING INFORMATION</u>					
Contractor Name/Address	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
SCC Vendor No. (SAP)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>SECTION III: CONTRACT AUTHORIZATION</u>					
Agency Signature	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Delegation, Department signs last</u>
Contractor Signature	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Counsel Signature (if required)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>SECTION IV: DETERMINATION OF TAX WITHHOLDING AND BENEFITS STATUS</u>					
Determination Complete	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
W-4, W-9, DE-4, PERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
If contract is with a current County employee, attach the Controller/Labor Relations-approved 'Hiring Current County Employee' Form	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____

(Do not attach the W-4, W-9 and the DE 4 forms with documents to be scanned into SAP. After processing them through ASAP and PeopleSoft as required, keep a copy of documents on file in department.)

CHECKLIST FOR STANDARD AND NON-STANDARD SERVICE AGREEMENTS

Agreements Will not be Processed Without a Completed Checklist

	DEPT	OBA	PROC.	NA	COMMENTS
<u>SECTION V: CONTRACT SPECIFICS</u>					
Service Description and Expected Outcome	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Deliverables - Milestones - Timeline for Performance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Performance Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Payment Schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>SECTION VI: STANDARD PROVISIONS</u>					
Standard Provisions Included	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Termination Clause	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Non-Discrimination Clause	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>SECTION VII: CONTRACTING PRINCIPLES</u>					
Type I or Type II Language	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Declaration of Contractor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Contractors have signed Declaration _____
<u>SECTION VIII: INSURANCE/INDEMNIFICATION</u>					
Required Insurance Exhibit(s) attached	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Waiver Attached (If appropriate)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Proof of insurance has been received _____
<u>SECTION IX: FEDERAL/STATE REQUIRED PROVISIONS</u>					
Special Provisions Included (e.g. Drug-free Workplace Activity, HIPAA Business Associate Language, etc)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	HITECH; Pro Bono Policy _____
<u>SECTION X: ADDITIONAL EXHIBITS</u>					
Other Exhibit(s) Included	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Protocol _____
<u>SECTION XI: MISCELLANEOUS</u>					
Statement of Economic Interest (Form 700)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
<u>SECTION XII: BEVERAGE NUTRITIONAL CRITERIA</u>					
Contractor Notified of County's Policy on Nutritional Beverages.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not applicable _____

CHECKLIST FOR STANDARD AND NON-STANDARD SERVICE AGREEMENTS

Agreements Will not be Processed Without a Completed Checklist

ADDITIONAL REQUIREMENTS

1. PROCUREMENT REQUIREMENTS

A. Signature Authority

The Director of Procurement or his/her designee has the authority to execute this Agreement because:

- This Agreement does not exceed \$100,000 per fiscal year and the Contractor does not have other agreements within the same budget unit during the same fiscal year that exceeds \$100,000 in aggregate.
- This Agreement is for Information Technology (IT) services related to a current or past acquisition of one or more technology products and does not exceed \$500,000 within the same budget unit, per fiscal year, and County Counsel has approved it as to form and legality.
- The Director of Procurement received a delegation of authority from the Board of Supervisors pursuant to a transmittal, resolution or other Board Action. *(Attach document)*
- The Department Head or designee received a delegation of authority from the Board of Supervisors pursuant to a transmittal, resolution or other Board Action. *(Attach document)*

B. Vendor Selection Process

Contractor was selected by: **CHECK ONE**

- Informal Competitive Process *(complete the table below and attach the executive summary in support of your recommendation)*
- Specified by the Board of Supervisors *(attach approved Board transmittal)*
- Formal Request for Proposal/Request for Qualifications *(attach the executive summary in support of your recommendation)*
- Sole source *(explain on page 4)*

For Informal Competitive Process Only	Vendor #1	Vendor #2	Vendor #3
Name			
Address			
Contact/Phone			
Quoted Price			
State reason for vendors <u>not</u> selected			

Please refer to Board Policy Manual Section 5.3.12 – Selection of Contractor. A selection process should, to all extent possible, include consideration of three or more consultants with a written recommendation by agency/department to the Director of Procurement. Sole source selections on such contracts must be justified in writing and approved by the Director of Procurement.

CHECKLIST FOR STANDARD AND NON-STANDARD SERVICE AGREEMENTS

Agreements Will not be Processed Without a Completed Checklist

A **Sole Source justification** is required when only one vendor has been considered in the selection process. County policy requires that the cost of conducting a competitive bidding process be weighed against the size and dollar amount involved in the agreement. Refer to the Board of Supervisors Policy Manual, Section 5.15 for valid reasons for sole source justification.

Explain Sole Source Justification: _____

- Or -

Sole Source Justification (*see attached*)

2. OBA REQUIREMENTS

A. Labor Contract and County Policy Requirements

Service Agreements must be consistent with all labor contracts and County policies. **Determine if the services included in this agreement are similar to services provided by County employees in any bargaining unit.** Consult the appropriate labor contract and the Office of Labor Relations to determine if a specific process is required. **Attach an explanation summarizing the results of the process** (letter of notification to and confirmation from bargaining unit is required).

- I. Are the services in this agreement similar to services provided by County employees in any bargaining unit? Yes No
- II. If no, please explain: Contractors are hired to represent the County in impact litigation, which is a legal specialty not handled by the attorneys in the County Counsel's Office.
- III. If yes, which bargaining unit and job classification? _____
- IV. Does this agreement include services that require you to notify one of the County bargaining units (e.g., SEIU Local 715 or SEIU Local 535). If yes, the department MUST attach a copy of the notification. Yes No
- V. An explanation summarizing the results of the process is attached (see above). Yes No

The Questions below must be addressed for ALL Dependent Contractors as well as Independent Contractors or employees of Independent Contractors that have been employed by the County within the last 2 years.

- VI. If this Agreement is for an Independent Contractor, has the Contractor or any of his/her employees been employed by the County within the last 2 years? Yes No N/A
- VII. If yes, please provide the name of the former employee(s) and answer the questions below for each former employee. Employee Name(s): _____
- VIII. Has the Contractor been employed by the County within the last 2 years? Yes No
If yes, in what capacity? Classified Unclassified Extra Help Provisional
Other, please state in what capacity: _____
Date of Separation: _____
Job Class and Step at Date of Separation: _____
Circumstances of Separation: Retirement Voluntary Separation Layoff
 Termination Other _____

(The County will not enter into Agreements for Service with former employees that have been terminated for cause.)

CHECKLIST FOR STANDARD AND NON-STANDARD SERVICE AGREEMENTS

Agreements Will not be Processed Without a Completed Checklist

B. Authorization to Contract with County Retirees

If the contractor is a County retiree, regardless of the date of retirement, no Agreement can be processed without authorization from the Office of the County Executive.

Is the contractor or any of his/her employees a County retiree? Yes No

If yes, a copy of the authorization from the Office of the County Executive **MUST** be attached.

C. Contracting Principles

Has the vendor received a copy of the Contracting Principles Resolution? Yes No

3. PROOF OF INSURANCE (Not required for Dependent Contractors)

PROOF OF INSURANCE IS REQUIRED PRIOR TO START OF SERVICES

Has the vendor submitted all required insurance documents? Are approved waivers on file, if required? Yes No

Have you verified that vendor is compliant on the online Insurance Compliance system? Yes No

If you answered "No" to either of the above questions, please explain below:

4. POLITICAL REFORM ACT REQUIREMENT

Statement of Economic Interest (Form 700)

If Contractor will be making any decisions on behalf of the County or influencing decisions, Contractor is required to complete a Form 700. When in doubt, contact your County Counsel.

Is Form 700 required? Yes No

If required, Form 700 must be filed with the Clerk of the Board within 30 days of the contract's effective date of _____. Contractor must submit Form 700 by _____ to the County's Contract Monitor. County Contract Monitor will submit the completed Form 700 with the Form 700 cover sheet to the Clerk of the Board by _____.

Alameda

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CLARA DELEGATING AUTHORITY TO THE
COUNTY COUNSEL TO EXECUTE, AMEND AND TERMINATE
CERTAIN AGREEMENTS FOR LEGAL SERVICES**

WHEREAS, the County Counsel is the legal officer of the County and pursuant to County Ordinance Code Section A22-16 no County agency may employ or consult any attorney for legal advice or counsel in any civil affair of the County government unless the County Counsel determines that the Office of the County Counsel is unable to provide the service; and

WHEREAS, contracts to which the County is a party must be approved by the Board of Supervisors unless they fall within the contracting authority of the County Director of Procurement or the authority to enter into the contract on behalf of the County has been delegated by the Board of Supervisors; and

WHEREAS, the Board of Supervisors may delegate contracting authority to County officials, and has done so from time to time as deemed necessary and in the interests of the County; and

WHEREAS, delegating the authority to the County Counsel or designee to execute, amend and terminate as necessary agreements for legal services where services are provided on a contingency fee basis or in an amount not to exceed \$200,000 per fiscal year would assist the County by expediting execution of said agreements and assist the County in providing timely legal services for the County when the County Counsel determines the situation warrants the use of outside counsel;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Clara:

1. The County Counsel or designee is hereby authorized on behalf of the County of Santa Clara to execute, amend and terminate as necessary agreements with outside counsel relating to legal services where services are provided on a contingency fee basis or in an amount not to exceed \$200,000 per fiscal year following approval by the Office of the County Executive.

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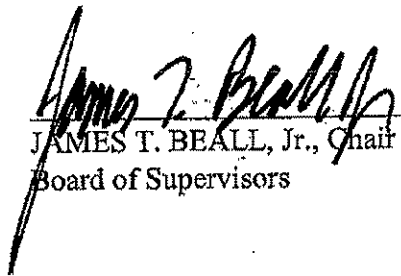
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Amended

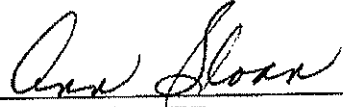
- 2. This delegation of authority shall be ongoing.
- 3. The Office of the County Counsel will provide an annual accounting to the Board of Supervisors of all the agreements entered into pursuant to this delegation of authority.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on FEB 28 2006 by the following vote:

AYES: Supervisors ALVARADO, BEALL, GAGE, KNISS, MCHUGH
 NOES: Supervisors None
 ABSENT: Supervisors None

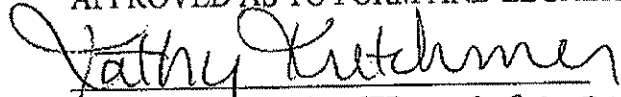

 JAMES T. BEALL, Jr., Chair
 Board of Supervisors

Attest:


 PHYLLIS A. PEREZ
 Clerk of the Board of Supervisors

Ann Sloan
 Chief Deputy Clerk
 of the Board of
 Supervisors

APPROVED AS TO FORM AND LEGALITY:


 KATHY L. KRETCHMER 2-27-06
 Deputy County Counsel

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