

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
TED'S VILLAGE PHARMACY INC.**

THIS AGREEMENT, entered into this _____ day of _____ ,
20_____, by and between the COUNTY OF SAN MATEO, hereinafter called
"County," and TED'S VILLAGE PHARMACY INC., located at 29 West 25th Avenue,
San Mateo, California, 94403, 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 comprehensive pharmacy services (including but not limited to dispensing, recordkeeping, drug utilization review, formulary management, patient profile, patient counseling, medication therapy management services, and other clinical pharmacy services) relating to County's participation in the 340B drug program to patients of the County's San Mateo Medical Center and its Clinics.

**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

Exhibit E – Corporate Compliance SMMC Code of Conduct (Third Parties)

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**. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2013 through June 30, 2016.

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

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the 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

The 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 the County learns of said unavailability of outside funding.

6. Relationship of Parties

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

7. Hold Harmless

a. It is agreed that Contractor shall defend, hold harmless, and indemnify County and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the negligent (or malicious/reckless) acts or omissions of Contractor and/or its officers, employees, agents, and servants.

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

c. It is agreed that County shall defend, save harmless, and indemnify Contractor and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the negligent (or malicious/reckless) acts or omissions of County and/or its officers, employees, agents, and servants.

d. The duty of each party to defend, hold harmless, and indemnify the other as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

e. In the event of concurrent negligence (or malicious/reckless acts) of County and/or its officers, employees, agents, and servants, on the one hand, and Contractor and/or its officers, employees, agents, and servants, on the other hand, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by Risk Management, and

Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy. Contractor shall at its own expense maintain the insurance coverage required by this Section.

- A. *Worker's Compensation and Employer's Liability Insurance.* The 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, the 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 I will comply with such provisions before commencing the performance of the work of this Agreement.
- B. *Liability Insurance.* The 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|--|
| (1) Comprehensive General Liability | \$1,000,000 per incident
\$3,000,000 in aggregate |
| (2) Motor Vehicle Liability Insurance | \$1,000,000 |
| (3) Professional Liability | \$1,000,000 |

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the 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 at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with Laws; Payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

Without limiting the generality of the foregoing, the parties agree to use patient specific information only for permitted treatment, billing and related record-keeping purposes, and to protect patient-specific information from unnecessary disclosure to persons not employed or contracted for by the parties, and from their own employees and contractors unless they have a need to know and agree to maintain the confidentiality of patient specific information. In the event that any patient information created, maintained or transmitted in connection with this agreement is to be transmitted electronically, the Parties agree that they shall comply in all respects with the requirements of HIPAA governing electronic transmission of individually identifiable patient information. See 42 CFR Section 160 et seq. Failure by either party to abide by these requirements shall be a basis for immediate termination of this agreement.

Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

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 the Contractor to penalties, to be determined by the County Manager, including but not limited to:
 - (1) termination of this Agreement
 - (2) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years
 - (3) liquidated damages of \$2,500 per violation
 - (4) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this section and/or to set off all or any portion of the amount described in this section 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. *The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.*

12. Compliance with Contractor Employee Jury Service Ordinance

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

13. Retention of Records, Right to Monitor and Audit

- A. Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the 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 the 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 both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

If to County: Chief Executive Officer
San Mateo Medical Center
222 W/ 39th Avenue
San Mateo, CA 94403
Facsimile: 650/573-2950

With copy to: County Counsel's Office
400 County Center
Redwood City, CA 94063
Facsimile: 650/363-4034

If to Contractor: Ted's Village Pharmacy Inc.
29 West 25th Avenue,
San Mateo, CA 94403
Facsimile: 650/349-1745

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

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

COUNTY OF SAN MATEO

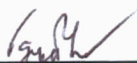
By: _____
Title: President
Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

TED'S VILLAGE PHARMACY INC.



Contractor's Signature

Date: 5-22-13

Long Form Agreement/Non Business Associate v 8/19/08

**EXHIBIT A TO THE AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND TED'S VILLAGE PHARMACY
INC.**

RECITALS

- A. The 1992 Veteran's Health Care Act created Section 340B of the Public Health Services Act, which classifies certain health care clinics, including San Mateo Medical Center and its clinics, as "**Covered Entities**" eligible to purchase outpatient prescription drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("**DHHS**").
- B. California Business & Professions Code §4126, effective January 1, 2002, authorizes Covered Entities, including San Mateo Medical Center and its clinics, to contract with pharmacies licensed under California state law, such as Contractor, to provide comprehensive pharmacy services including dispensing Covered 340B Drugs for the Covered Entity, provided certain requirements are met, including adequate inventory control and limitation of dispensing to eligible outpatients of the Covered Entity.
- C. The County of San Mateo and Contractor mutually desire to enter into a "ship to/bill to" arrangement under which Contractor will order Covered 340B Drugs and receive shipment, maintain inventory and controls, dispense such drugs on behalf of San Mateo Medical Center (SMMC) only to eligible SMMC outpatients, and charge and collect for such drugs, all on SMMC's behalf, and SMMC will be billed and will pay for such drugs, in compliance with applicable laws and regulations.
- D. County and Contractor mutually acknowledge that their intent in entering into this Agreement is solely to facilitate the participation of SMMC and its Clinics in the 340B drug purchasing program, without having to establish and operate its own pharmacy. The services provided each to the other are only those necessary in order to fulfill this intent, and all financial arrangements established herein are mutually determined to represent either cost or fair market value for the items and services received. The parties expressly do not intend to take any action that would violate state or federal anti-kickback prohibitions, such as those appearing in Section 1128B of the Social Security Act, 42 USC Section 1320a-7b. Instead, it is the intention of the parties that this Agreement and all actions taken in connection herewith shall fully comply with the regulatory requirements of the safe harbor for personal services and management contracts appearing in 42 CFR Section 1001.952(d), and this Agreement shall in all respects be construed consistent therewith.

NOW, THEREFORE, in consideration of the promises, covenants and agreements hereinafter set forth, County and Contractor hereby agree to the following terms and conditions:

1. Services and Covered 340B Drugs.

The prescription outpatient drugs covered by this Agreement (hereinafter "**Covered 340B Drugs**") include "Legend" drugs, that is those drugs which by federal law can be dispensed only pursuant to a prescription and which are required to bear the legend "Caution – Federal Law prohibits dispensing without prescription." Other qualified prescriptions include insulin (on prescription only) and related testing and administration supplies and over the counter medications as long as prescribed by an authorized medical provider. All Covered 340B Drugs purchased under this Agreement are the property of County. All Covered 340B Drugs subject to this Agreement are also subject to the Limiting Definition of "covered outpatient drug" set forth in Section 1927(k) of the Social Security Act, 42 USC 1396r-8(k) (2) & (3), which is incorporated as the applicable definition for the section of the 1992 Veterans Affairs Act that created Section 340B of the Public Health Services Act.

In relation to Covered 340B Drugs provided by Contractor under this Agreement, Contractor shall provide comprehensive pharmacy services (including but not limited to dispensing, recordkeeping, drug utilization review, formulary management, patient profile, patient counseling, medication therapy management services, and other clinical pharmacy services).

2. Eligible Patients. Only outpatients of County's SMMC, excluding County's SMMC patients who are MediCal beneficiaries and for whom claims for pharmaceuticals will be submitted to the state MediCal program or the Health Plan of San Mateo, are eligible to purchase or receive Covered 340B Drugs from Contractor ("**Eligible Patients**"). Under no circumstances will Contractor dispense Covered 340B Drugs to anyone other than Eligible Patients of SMMC or its Clinics. Contractor shall dispense Covered 340B Drugs to Eligible Patients only in the following circumstances:

- 2.1 Upon presentation of a prescription form bearing the name of one of SMMC's Clinics or San Mateo Medical Center, the Eligible Patient's name, a designation that the patient is an Eligible Patient, and the signature of a legally qualified health care provider affiliated with SMMC; or
- 2.2 Upon receipt of a prescription ordered by telephone or electronically on behalf of an Eligible Patient by a legally qualified health care provider affiliated with SMMC who states that the prescription is for an Eligible Patient. County will furnish a list to Contractor of all such qualified health care providers and will update the list of providers to reflect any

changes. Provided, however, that no electronic transmission of patient specific information hereunder shall occur on or after the compliance date for healthcare providers of final HIPAA regulations, currently scheduled for October 16, 2003, unless and until the Parties have provided for strict compliance with applicable Health Insurance Portability and Accountability Act (HIPAA) rules, as described in Section 10 of the Agreement.

2.3 The following is a list of SMMC Clinics covered by this Agreement:

Name, Address & OPA ID# of Facility
San Mateo Medical Center 222 West 39 th Avenue San Mateo, CA 94403 (DSH050113)
San Mateo County Health Center 222 West 39 th Avenue San Mateo, CA 94403 (CH091140)
San Mateo Medical Center Edison Clinic 222 West 39 th Avenue San Mateo, CA 94403 STD 944039
San Mateo Medical Center Daly City Youth Health Center 2780 Junipero Serra Daly City, CA (CH09114D)
San Mateo Medical Center Fair Oaks Children's Clinic 630 Laurel Street Redwood City, CA (CH09114E)
San Mateo Medical Center North County Health Center 380 90 th Street Daly City, CA (CH09114F)

Name, Address & OPA ID# of Facility
San Mateo Medical Center Willow Clinic 795 Willow Road Menlo Park, CA (CH09114I)
San Mateo Medical Center Fair Oaks Family Health Center ¹ 2710 Middlefield Road Redwood City, CA (CH09114L)
San Mateo Medical Center Coastside Health Center 225 S Cabrillo Hwy #100A Half Moon Bay, CA (CH09114N)
San Mateo Medical Center South San Francisco Health Center 306 Spruce St. South San Francisco, CA (CH09114O)
San Mateo Medical Center Sequoia Teen Wellness Center 200 James Avenue Redwood City, CA (CH09114S)

This list may be changed by County by providing written notice to Contractor of any changes, and changes do not require an amendment of this Agreement or Exhibit.

3. Restocking and Inventory Maintenance

- 3.1 Restocking. Contractor agrees to place orders as necessary with one or more pharmaceutical suppliers (“**Supplier**”) to maintain and replenish the drugs consumed pursuant to this Agreement. County and Contractor shall arrange with Supplier to ship directly to Contractor. Contractor shall provide County a copy of each and every order so placed, as well as shipping orders and invoices showing prices. Such drugs supplied by Supplier under the 340B program are

¹ NOTE – In Fall 2013, the Fair Oaks Family Health Center name and location will change, but the number will remain the same.

referred to as “340B Purchased Drugs.”

- 3.2 Inventory. Contractor, with the assistance of County, will establish and maintain a tracking system suitable to track drug inventory under this Agreement and to prevent diversion of 340B Purchased Drugs to individuals who are not patients of County. The primary method for tracking and maintaining inventory on an on-going basis will be through a “replenish method” which uses a computer-based system provided by a third-party administrator with which County has a contract. This system will allow both Contractor and County to perform real-time assessment of inventory and use. In relation to such third-party services available to County and its contracted pharmacies, Contractor will work with County to determine if the technology is usable by Contractor. Contractor shall undertake reasonable efforts to work with County and its third-party provider of said technology to attempt to utilize the technology. If use of such technology is not feasible, Contractor will work with County to establish an appropriate system.

If 340B Purchased Drugs are maintained in Contractor's inventory, Contractor shall conduct a complete and accurate inventory of all Covered 340B Drugs on the last business day or the 30th of June of each year and any time requested and provide an electronic file in Excel compatible format within 5 days of conducting the inventory.

If 340B Purchased Drugs are maintained in Contractor's inventory, Contractor shall maintain an inventory of expired or otherwise unusable Covered 340B Drugs and provide that inventory in electronic file in Excel compatible format within 5 days of conducting the annual inventory. Expired or otherwise unusable Covered 340B Drugs shall be disposed of in compliance with state, local or federal regulations.

- 3.3 Inventory Maintenance and System to Prevent Diversion. Contractor agrees to maintain a stock of Covered 340B Drugs physically separate from its other drug inventory, to protect its inventory of Covered 340B Drugs against intentional or unintentional dispensing to anyone other than Eligible Patients, and to reduce the possibility of this or other occurrences of drug diversion. Contractor shall maintain such records as are adequate to permit it to prepare the reports required under Section 7 hereof and to permit County, DHHS, or any eligible drug manufacturer to determine upon audit to whom such Covered 340B Drugs have been dispensed. Upon termination of this Agreement, Contractor shall deliver all unused items of inventory purchased by or on behalf of County hereunder to County, if County has a valid permit, or, in the absence of such a permit, return them to Supplier for County's credit, if possible, or destroy them, if they cannot be returned or transferred within thirty days following termination.

4. Payment to Supplier by County. County agrees to timely pay Supplier amounts owing to Supplier for Covered 340B Drugs purchased hereunder. In the event that Supplier is not paid and does not ship Covered 340B Drugs in sufficient quantity to Contractor, Contractor shall notify County in writing of its lack of 340B Drugs, and, if County continues to write prescriptions for Contractor to fill, may thereafter, in its sole discretion, fill prescriptions from its non-340B inventory, and charge for its own account Eligible Patients or County according to its own, non-340B prices as described in Section 5.2, or Contractor may refuse to fill prescriptions of County, until satisfactory arrangement is made by County.

5. Payments to Contractor by County.

5.1 Contractor Dispensing Fee. Contractor and County agree that Contractor shall receive a Dispensing Fee as specified in Exhibit B, for each prescription of Covered 340B Drugs filled for Eligible Patients and that such Dispensing Fee covers Contractor's costs and, in addition to delivery fees, constitutes the sole and exclusive payment Contractor is entitled to receive hereunder. With respect to each prescription, County shall designate whether such Dispensing Fee is to be collected from the Eligible Patient, from County, or in part from the Eligible Patient and in part from the County. If County is to pay all or part of the Dispensing Fee, Contractor shall bill County not more frequently than every 2 weeks for the amounts owing. County agrees to make payment within thirty to sixty (30 - 60) days of receipt of Contractor's invoice for such Dispensing Fees. In the event that payment is late, County agrees to pay interest at the rate of seven percent (7%) per annum on the late balance.

5.2 Contractor Use of Non-340B Stock.

Under the replenishment method referred to in Section 3.2, Contractor may provide Covered 340B Drugs to Eligible Patients from its own stock. Pursuant to the replenishment method, Contractor shall then, if possible, replenish such drugs using 340B Purchased Drugs. In the event that County has not replenished such drugs using 340B Purchased Drugs, County will periodically meet with Contractor to determine if the drugs provided as Covered 340B Drugs may be replenished as 340B Purchased Drugs or, in the alternative, if County will pay Contractor the actual acquisition cost of the drugs dispensed to Eligible Patients from Contractor's own stock.

- 5.3 In the event that the amount owed under Sections 5.1 or 5.2 by County to Contractor exceeds one thousand dollars (\$1,000), Contractor shall have the right to refuse to fill further prescriptions of County, unless satisfactory arrangement is made by County.
- 5.4 Delivery Fee. Contractor shall work with County to create criteria governing when prescriptions may be delivered by Contractor to patients who are otherwise unable to access the pharmacy to pick up prescriptions. Such off-site deliveries will be permitted only based on need and not for the convenience of the patient. Contractor shall follow the criteria developed by the parties in this regard. Contractor shall maintain records of such approved, need-based off-site deliveries of prescriptions to patients. Contractor and County agree that Contractor shall receive \$5 per delivery (not per prescription) to cover the cost of such approved off-site deliveries, and Contractor will invoice County not more frequently than monthly for the amount owing. At any point County may give written notice to Contractor of its decision to stop covering the off-site delivery fee under this Agreement, and after the effective date of such notice, Contractor shall no longer have any obligation to deliver any prescription under this Agreement and shall not charge County for delivery of any prescription.
6. Payment to Contractor by Patient. County may assign a share of the cost of the drug by the patient for patient's in County's ACE Program. In the event the patient is to share in the cost of the drug, Contractor shall collect payment from the patient prior to dispensing the drug. Contractor shall maintain records of all patient payments and submit such records monthly to County, including the name and patient number of patients who do not pay the co-payment. Contractor shall deduct payments from what County would otherwise owe Contractor under Sections 4 and 5.
7. Reports. By the tenth (10th) day of each month, Contractor shall transmit to County a detailed report, in Excel compatible format showing each Eligible Patient served, the prescription filled, with specific details about each claim, including the drug name, strength, unit dose, appropriate identification codes, manufacturer, quantity dispensed, and amount charged and collected for the previous month (example attached).
8. Maintenance of Records. Contractor will preserve all records of shipment, receipts, and dispensing of 340B Purchased Drugs for audit at any reasonable time for a period of three years following date of provision of services. It is understood by both parties under this Agreement that, under Section 340B(a)(5)(C) of the PHS Act, they are subject to audit by the drug manufacturers and the U.S. Public Health Service of DHHS of records that directly pertain to compliance with the Act.

9. Contractor Compliance Responsibility. Contractor shall be solely responsible for all professional advice and services rendered by it for the Eligible Patients. Contractor is responsible for and agrees to render services as herein provided in accordance with the rules and regulations of the California State Board of Pharmacy [or other applicable state, if Contractor is located in such state], all laws of the State of California, and all applicable laws and regulations resulting from the Veteran's Health Care Act of 1992 (P.L. 102-585, sec 602). It is expressly understood that relations between the Eligible Patients and Contractor shall be subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship. Contractor shall be solely responsible, without interference from the County or its agents to said Eligible Patient for pharmaceutical advice and service, including the right to refuse to serve any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations.
10. Medicaid Prescriptions. Notwithstanding anything herein to the contrary, Contractor will not use Covered 340B Drugs to dispense prescriptions paid for by the state MediCal agency or the Health Plan of San Mateo but will use its non-340B inventory for such non-eligible patients and bill and collect MediCal on its own account. When a Medicaid agency pays for drugs for its beneficiaries, it is generally entitled to claim a rebate from the drug manufacturer to reduce its effective cost to a statutorily established price. Section 340B extends a similar price to Covered Entities and requires that there be a mechanism to protect drug manufacturers from Medicaid rebate claims for Covered 340B Drugs purchased pursuant to Section 340B. To avoid any chance that a State Medicaid agency will pay for 340B Drugs purchased hereunder and then submit prohibited rebate claims to the drug manufacturers, Contractor agrees to dispense non-340B Purchased Drugs from its own inventory in filling Medicaid prescriptions for County patients who are Medicaid beneficiaries, and all charges collected in connection therewith shall be for Contractor's account. Contractor further agrees that, for County patients who are Medicaid beneficiaries, Contractor will take all reasonable steps necessary to obtain coverage from Medicaid for the costs associated with drugs prescribed for those patients, including activities necessary for requesting a Treatment Authorization Request from MediCal. County shall not be liable to Contractor for dispensing fees or other costs in connection with prescriptions filled for Medicaid beneficiaries receiving a prescription whose cost will be covered by MediCal.
11. Patient Choice. Contractor understands and agrees that Eligible Patients of County may elect not to use Contractor for pharmacy services. In the event that an Eligible Patient elects not to use Contractor for such services, the patient may obtain the prescription from the pharmacy provider of his or her choice. Subject to a patient's freedom to choose a provider of pharmacy services, County will inform Eligible Patients that they may be eligible for a discount on prescription drugs ordered by County, other than Medicaid

prescriptions, and advise them that such discount has been arranged for only at Contractor (or another 340B contractor with County).

12. Pharmacy Site(s). Contractor agrees it will provide pharmacy services contracted for under this Agreement at only the site(s) agreed upon between Contractor and County. Contractor and County shall maintain a list of such mutually-agreeable sites, which may be updated on mutual agreement from time to time without the need for an amendment of this Agreement.
13. Inspection by Manufacturer. Contractor and County understand and agree that a copy of this Pharmacy Services Agreement will be provided, upon request, to a drug manufacturer who has signed a purchasing agreement with DHHS. In the event either party receives such a request, it shall immediately inform the other party.
14. Term and Termination. The term of this Agreement shall be as indicated in Section 4 of the Agreement unless terminated pursuant to Section 4 of the Agreement or by any of the following:
 - 14.1 Mutual agreement of the parties;
 - 14.2 Thirty (30) days prior written notice by either party;
 - 14.3 County, immediately and without prior notice, upon a material breach of this Agreement by Contractor. Without limiting County's right to assert any other act or failure to act as constituting a material breach by Contractor, Contractor's dispensing of a Covered Drug to an individual who is not an Eligible Patient or any other diversion of a Covered Drug shall be deemed to be a material breach. County's failure to take action with respect to Contractor's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of County's right to insist on future compliance with such term or provision.
 - 14.4 Contractor, immediately and without prior notice, upon a material breach of this Agreement by County. Without limiting Contractor's right to assert any other act or failure to act as constituting a material breach by County, County's prescribing of a Covered Drug to an individual who is not an Eligible Patient or any other diversion of a Covered Drug shall be deemed to be a material breach. Contractor's failure to take action with respect to County's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of Contractor's right to insist on future compliance with such term or provision.

- 14.5 Either party, immediately upon written notice to the other, for material breach of patient confidentiality requirements under HIPAA, as specified in Section 10 of the Agreement.
15. Confidentiality of Records. The parties agree to protect the confidentiality of each other's records and business information disclosed to it and not to use such information other than as necessary and appropriate in connection with performance of this Agreement or except as required by law (including but not limited to as required by the California Public Records Act). Each party acknowledges that disclosure of confidential information of the other would cause the other party irreparable harm and may, without limiting the remedies available for such breach, be enjoined at the instance of the harmed party. Upon termination of the Agreement, each party agrees to cease use of the other's information and to return it, or destroy it, as appropriate.

**EXHIBIT B TO THE AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND TED'S VILLAGE
PHARMACY INC.**

For each prescription dispensed to eligible patients during the term of this Agreement, including under the Access to Care for Everyone (ACE) and ACE County (formerly WELL) programs, County shall pay an eleven dollar twenty-five cent (\$11.25) dispensing fee to Contractor.

Subject to the conditions and limitation of Section 5.4 of Exhibit A, Contractor shall receive \$5 per delivery (not per prescription) to cover the cost of approved off-site deliveries pursuant to the criteria agreed upon between County and Contractor, and Contractor will invoice County not more frequently than monthly for the amount owing. At any point County may give written notice to Contractor of its decision to stop covering the off-site delivery fee under this Agreement, and after the effective date of such notice, Contractor shall no longer have any obligation to deliver any prescription under this Agreement and shall not charge County for delivery of any prescription.

No additional fees shall be paid by County for services under this Agreement.

EXHIBIT E

CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)

The person/entity listed below (the "Undersigned") recognizes and is fully dedicated to advancing SMMC's commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

The Undersigned will comply with all Federal, State or other governmental health care program requirements and with SMMC's policies and procedures relating to SMMC's Corporate Compliance Program, including the requirements set forth in the Corporate Integrity Agreement (CIA) to which SMMC is a party (available online at http://oig.hhs.gov/fraud/cia/agreements/the_county_of_san_mateo_03062009.pdf).

The Undersigned, to the extent its contractual duties require it to submit the reports covered in this paragraph, will promptly submit accurate information for Federal health care cost reports including, but not limited to, the requirement to submit accurate information regarding acute available bed count for Disproportionate Share Hospital (DSH) payment.

The Undersigned will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements or of SMMC's Compliance Program policies and procedures.

The Undersigned has the right to use the SMMC Disclosure Program by calling the Compliance Hotline or reporting incidents to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

The Undersigned understands that non-compliance with Federal health care program requirements and SMMC's Compliance Program policies and procedures, and failing to report such violations, could result in termination of the Agreement and/or any other penalties permitted by law.

The Undersigned is responsible for acquiring sufficient knowledge to recognize potential compliance issues applicable to the duties outlined in the Agreement and for appropriately seeking advice regarding such issues.

The Undersigned will not offer, give or accept any bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships). The Undersigned will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

The Undersigned will not engage in any financial, business, or other activity which competes with SMMC/County business which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources, except to the extent consistent with the SMMC/County Incompatible Activities and Outside Employment policy and the Agreement.

The Undersigned will cooperate fully and honestly with internal audits and monitoring programs to help assure that SMMC's compliance is maintained with all applicable federal/state regulations, the Joint Commission standards, and hospital system-wide policies.

**TO REPORT VIOLATIONS, CALL THE
COMPLIANCE HOT LINE: (800) 965-9775**

The Undersigned hereby certifies by signing below that an authorized representative has received this Code of Conduct, understands it, has authority to commit the Undersigned to this Code of Conduct, and hereby commits the Undersigned to comply with this Code of Conduct.

TEO'S VILLAGE PHARMACY INC
Name of Person/Entity (the "Undersigned")

Steve Pinn STEVE PINN
Signature and Printed Name

5/29/13
Date

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- ☒ a. Employs fewer than 15 persons.
- ☐ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

STEVE PHAM
Name of 504 Person - Type or Print

Ted's Village Pharmacy
Name of Contractor(s) - Type or Print

29 W. 25th Avenue
Street Address or P.O. Box

San Mateo, CA 94403
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

[Signature]
Signature

CEO
Title of Authorized Official

5/29/13
Date

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."