AGREEMENT BY AND BETWEEN
THE COUNTY OF SANTA CLARA
AND WESTERN GOVERNORS UNIVERSITY
FOR A CLINICAL TRAINING PROGRAM

This is an agreement by and between the County of Santa Clara ("County") and Western Governors University ("Institution") for a clinical training program for Institution’s nursing program students ("Agreement").

RECITALS

WHEREAS, the Institution has need of off-site placements for the clinical training of students in its nursing program ("Students"); and

WHEREAS, the facilities and the programs at the County’s Department of Public Health could provide an excellent clinical training opportunity for the Institutions’ Students; and

WHEREAS, the County believes that providing such clinical training opportunity to the Institution’s Students would also provide a public service.

NOW, THEREFORE, in consideration of the mutual promises to each other, the parties agree as follows:

1. **Clinical Training Duties and Responsibilities**
   a. The duties and responsibilities of the County and the Institution with respect to the clinical training program are more particularly described in Exhibit A, which is attached hereto and incorporated herein by reference.
   b. The number of Students to be placed will be mutually agreed upon by the Institution and the County. It is further understood that the County has the discretion to terminate any Student from the training, should such termination be deemed in the County’s best interests.

2. **Term; Termination**
   a. **Term.** This Agreement commences on the date that it is fully executed and has a term of five (5) years.
   b. **Termination without Cause.** Either party has the right to terminate this Agreement without cause as of a date certain by written notice delivered not less than thirty (30) days prior to such date. Such notice shall indicate the effective date of such termination.
   c. **Termination for Cause.** County may terminate this Agreement for cause as of a date certain by written notice delivered not less than fifteen (15) days prior to such date. For purposes of this Agreement, “cause” includes, but is not limited to, any of the following: (a) material breach of this Agreement by Institution, (b) violation by Institution of any applicable laws or regulations, or (c) assignment, delegation, or subcontracting by Contractor of this Agreement without the prior written consent of County, which County may withhold in its sole and absolute discretion. Such notice shall specify the reason for
termination and shall indicate the effective date of such termination.

d. **Consequences of Termination.** Termination of this Agreement will also result in the simultaneous termination of any and all Student rotations then underway.

3. **INDEMNIFICATION AND INSURANCE**
Exhibit B-3 CFA, Insurance Requirements for Clinical Affiliation Agreements, is attached and incorporated into this agreement.

4. **CONFIDENTIAL INFORMATION**
It is understood that all patient information collected and maintained for the purpose of diagnosis or treatment is confidential. County employee information, financial information and proprietary information is also confidential. Confidential information must not be disclosed to any person or entity without the prior written consent of County. Institution must ensure that Students abide by the terms of the Confidentiality of Patient Information form’s and policy which are attached hereto as Exhibit C and incorporated herein by reference. Institution must provide original forms executed by each student admitted to the clinical training program, prior to the commencement of each student’s experience on the County campus.

5. **WAIVER**
The failure of County to insist upon the strict performance of any of the terms, covenants and conditions of this Agreement are not deemed a waiver of any right or remedy that County may have, and are not deemed a waiver of its right to require strict performance of all of the terms, covenants and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms, covenants and conditions.

6. **STATUS OF PARTIES**
This is an Agreement by and between independent contractors and may not be construed to create an employment, agency, partnership, joint venture or association relationship. Neither Institution nor its Students are considered County employees and neither are entitled to any of the benefits enjoyed by County employees, including, but not limited to, salary, vacation pay, sick pay, or retirement, social security or workers’ compensation.

7. **ASSIGNMENT**
This Agreement may not be assigned, in whole or in part, without the prior written consent of County.

8. **OBEY ALL LAWS**
Throughout the term of this Agreement, Institution’s Students must obey all applicable rules, regulations, policies, laws, statutes and ordinances, whether local, state or federal, including, but not limited to, applicable laws prohibiting discrimination based on race, color, ancestry, creed, sex/gender, sexual orientation, religion, national origin, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, marital status or age and the Health Care Portability and Accountability Act of 1996 ("HIPAA") (42 USC 1320d et seq.). The parties must execute any amendments necessary to implement such laws.
9. **NOTICE**
Any notice required to be given by either party, or which either party may wish to give, must be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as set forth below or to such other place the parties designate pursuant to this paragraph.

To Institution
Western Governors University
Attn: General Counsel
4001 South 700 East, Suite 700
Salt Lake City, UT 84107

May be contacted for non-notice purposes:
Michelle Stebner
Community Health Coordinator
Phone: 801-428-5335
Email: mstebner@wgu.edu

To County
Charis Subil, PHN, RN, BSN
Nursing Director
Public Health Department
976 Lenzen Avenue, Second Floor
San Jose, CA 95126

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail. Either Party may designate a different person and/or address for the receipt of notices by sending written notice to the other Party.

10. **CONTROLLING LAW**
This Agreement is governed and construed in accordance with the laws of the State of California. The parties agree that venue will be the County of Santa Clara for all purposes.

11. **ENTIRE AGREEMENT; AMENDMENTS**
This Agreement, along with any exhibits and attachments, constitutes the entire Agreement by and between the parties relative to the clinical training program. Any prior or contemporaneous oral or written agreements by and between the parties or their agents or representatives relative to the clinical training program are hereby revoked and extinguished by this Agreement. This Agreement may only be amended by an instrument signed by the parties.

12. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT WORKFORCE DESIGNATION**
Both parties agree that Students, instructors or agents of Institution who are involved in the clinical training program under this Agreement will be designated as members of the County’s workforce for the purpose of meeting privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Institution will train these members of the workforce on Santa Clara Valley Health and Hospital System (SCVHHS) policies and procedures with respect to the confidentiality and use or disclosure of protected health information of patients as necessary and appropriate for the members of the workforce to carry out their functions while at SCVHHS. The County will provide Institution with the appropriate SCVHHS policies and procedures, which are subject to change from time to time. The County reserves the right to take appropriate action for violation of its policies; such action may include the immediate termination of any Student, instructor or agent of Institution who violates SCVHHS policies.
13. **Authority to Execute**
Each party hereby represents and warrants that the person executing this Agreement on their behalf is duly authorized to sign this Agreement and bind the party.

14. **Severability**
If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

15. **County No Smoking Policy**
Contractor and its employees, students, 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.

16. **Counterparts**
This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

17. **Beverage Nutrition Criteria**
Institution shall not use County funds to purchase beverages that do not meet the County’s nutritional beverage criteria. The six categories of nutritional beverages that meet these criteria are: (1) water with no additives; (2) 100% fruit juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container); (3) dairy milk, non-fat, 1% and 2% only, no flavored milks; (4) plant derived (i.e., rice, almond, soy, etc.) milks (no flavored milks); (5) artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (teas, electrolyte replacements); and (6) other non-caloric beverages, such as coffee, tea, and diet sodas. These criteria may be waived in the event of an emergency or in light of medical necessity.

18. **Debarment and Suspension Certification**
Institution guarantees that it, its employees, students, contractors, subcontractors or agents (collectively for the purpose of this section only “Institution”) are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Institution must within 30 calendar days advise the County if, during the term of this Agreement, Institution becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Institution will indemnify, defend and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Institution.
19. **ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS**

Institution assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Institution for sale to the County pursuant to this Agreement.

INTENDING TO BE BOUND hereby the parties' authorized representatives execute this agreement.

County of Santa Clara, "County"

Western Governors University, "Institution"

Rae Wedel, Division Director
On behalf of Dan Peddy cord, Public Health Director

Date

Jan Jones Schenk, RN, MNA, NE-BC
Chief Nursing Officer

Date

Approved:

Emily Harrison, Deputy County Executive

Approved as to form and legality:

Jenny S. Lam
Deputy County Counsel

Date

Exhibits to this Agreement:

Exhibit A
Responsibilities of County and Institution

Exhibit B-3 CFA
Insurance Requirements for Clinical Affiliation Agreements

Exhibit C
Confidentiality of Patient and Employee Information
EXHIBIT A

RESPONSIBILITIES OF COUNTY AND INSTITUTION

I. County shall:

A. Provide clinical training opportunity for Institution Students.

B. Retain full responsibility for the care of patients and maintain supervision of Students insofar as their presence affects the operation of the County.

C. Retain the right, in its sole discretion, to exclude any individual at any time from the clinical area if for any reason County determines such exclusion is in the best interest of County and/or the patients under the County’s care.

D. Select County staff members to serve as preceptors.

II. Institution shall:

A. Designate qualified Students to be offered clinical training at Santa Clara Valley Health and Hospital System (SCVHHS), including Public Health Department.

B. Design and formulate the clinical training plan.

C. Designate a faculty member to work in collaboration with County to coordinate and implement the clinical training provided to Students.

D. Define the methodology for evaluating Student performance while participating in the clinical training, develop the evaluation tool to be used, and coordinate the evaluation process for the clinical training program.

E. Maintain responsibility for overseeing Students’ performance during their clinical training.

F. Maintain all Student attendance and academic records.

G. Require Students to provide County with advance notice of any schedule change.

H. Ensure that each Student has satisfactorily completed classes on infection control and cardiopulmonary resuscitation prior to participating in clinical training program with County. Ensure that Students provide County with evidence of current successful completion of Basic Life Support examination.

I. Certify that within three months before entry into the clinical training program each Student and instructor has successfully passed a health screening and has me: the
County communicable disease screening requirements set forth below or as thereafter modified.

1. For persons with history of a negative PPD, two-step PPD test (unless the person has had a PPD test within last three months- then it can be a one-step test) when starting at SCVMC; annual or semiannual one-step PPD test thereafter, as indicated by risk assessment.

2. If skin test is positive, chest x-ray (unless x-ray has been done in last three months and is available for review) documented. If chest x-ray is abnormal, clinician clearance must be obtained. Annual or semiannual symptom review thereafter, as indicated by risk assessment.

3. Written documentation of rubella (German measles) and mumps titers, vaccine(s) or written physician documentation of past disease. If rubella vaccine is medically contraindicated, documentation by physician on form to be provided by County.

4. Written documentation of: (a) two doses of measles vaccination with live vaccine since 1967, or (b) physician documentation of past disease, or (c) positive measles antibody titer.

5. Persons with a negative measles antibody titer must be vaccinated: (a) with two doses of live vaccine if born after 1957, or (b) with one dose of live vaccine if born before 1957, and have written documentation of one dose of measles vaccine given before 1963 or after 1967, or (c) with two doses of vaccine if born before 1957 and have no documentation of measles vaccination.

6. Written medical documentation of receipt of two doses of varicella (chicken pox) vaccine given four to eight weeks apart. If person has not been vaccinated, varicella titer or written physician documentation of prior disease is required.

7. Written medical documentation of Hepatitis B vaccination or documentation of declination/waiver.

J. Require that Students who have been injured or ill provide a physician’s clearance at County’s request.

K. Ensure that Students maintain the confidentiality of patient and County information.

L. Ensure that Institution’s Students and instructors are informed, knowledgeable and comply with all applicable SCVHHS policies and procedures.

M. Ensure that Institution’s Students obtain a photographic identification badge and wear this badge at all times while participating in the clinical training program.
III. County and Institution shall:

A. Coordinate operational details of the clinical training program, including the clinical training schedule, which shall be agreed upon by County and Institution in advance.
INSURANCE REQUIREMENTS FOR
CLINICAL AFFILIATION AGREEMENTS

Indemnity

The Institution shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, any action or omission by Institution and/or its agents, students, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or sole wilful misconduct of the County. The Institution shall further reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation enforcing this provision. This provision shall survive termination of the agreement between the County and Institution.

Insurance

Without limiting the indemnification of either party to this agreement, Institution shall provide and maintain at its own expense, throughout the term of this Agreement, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Institution shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Institution shall not receive a Notice to Proceed under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Institution.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County or their designated agent.

2/2010
D. **Insurance Required**

1. **Commercial General Liability Insurance** - for bodily injury (including death) and property damage which provides limits as follows:
   
a. Each occurrence - $1,000,000
   
b. General aggregate - $2,000,000
   
c. Personal Injury - $1,000,000

2. **General liability coverage shall include:**
   
a. Premises and Operations
   
b. Personal Injury liability
   
c. Severability of interest

3. **General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:**

   **Additional Insured Endorsement**, which shall read:

   "County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds."

   Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. **Workers' Compensation and Employer's Liability Insurance**
   
a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
   
b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.
5. **Professional Errors and Omissions Liability Insurance**

   a. Coverage shall be in an amount of not less than one million dollars ($1,000,000) per occurrence/aggregate.

   b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars ($50,000) per occurrence/event.

   c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

6. **Claims Made Coverage**

   If coverage is written on a claims made basis, the Institution will procure and maintain coverage necessary to ensure:

   a. Continued and uninterrupted coverage of all claims, including those made after the Agreement expires.

   b. Policy retroactive date coincides with or precedes the Institution's start of work (including subsequent policies purchased as renewals or replacements).

E. **Special Provisions**

   The following provisions shall apply to this Agreement:

1. In the event the Institution’s Students are not included in its above-referenced insurance or funded self-insurance program, said Students will obtain and maintain their own insurance coverage in the same amounts. Institution shall provide evidence of Student’s insurance coverage prior to the Student clinical training experience and upon request during the duration of the Student’s clinical training experience.

2. If Institution’s insurance does not cover Students driving their own automobiles, Institution will require each Student to obtain and maintain automobile liability coverage in an amount equal to or greater than the minimum limits required by the State of California for the duration of the Student’s clinical training experience.

3. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Institution and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Institution pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
4. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Institution. However, this shall not in any way limit liabilities assumed by the Institution under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity.

5. Should any of the work under this Agreement be sublet, the Institution shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Institution may insure subcontractors under its own policies.
Santa Clara Valley Health and Hospital System
Compliance and Privacy Office
Confidentiality of Patient and Employee Information
Security and Confidentiality Agreement

Name ____________________________  
(Print)

Social Security #: ___________________  County Employee #: (if applicable) ____________

SCVHHS Department ____________________________

☐ Employee ☐ Dependent Contractor ☐ Volunteer ☐ Student ☐ Other ____________________________

As a Santa Clara Valley Health & Hospital System workforce member, I will have access to protected health information (PHI) and electronic protected health information (ePHI) regarding SCVHHS patients and plan members. I understand the sensitive nature of these medical records and the PHI/ePHI contained in them and I agree to abide by this Security and Confidentiality Agreement at all times.

Subject to state and federal HIPAA and Privacy laws and SCVHHS and County policies as referenced below, I understand that it is the policy of SCVHHS that all patients and plan members have a right to confidential treatment of all communications and records pertaining to the medical and mental health services provided to them.

All employees and agents of SCVHHS and all parties doing business with SCVHHS shall respect the rights of patients in regard to confidentiality of such information. Violation of any law or any SCVHHS policy or County policy regarding the acquisition, access, use, disclosure, sharing, or reproduction of PHI/ePHI is a cause for disciplinary action and may also result in civil liability and/or criminal charges. Division A16 the Santa Clara County Ordinance Code (Information Practices and Individual Privacy) sets out the County of Santa Clara’s policies regarding personal information collected by County agencies. It provides the following penalties.

§A16-12. Civil remedies.
(h) Any person who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal or confidential information maintained by an agency or from records . . . maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual to whom the information pertains.

(a) The intentional violation of any provision of this division or of any rules adopted thereunder, by an officer or employee of any agency shall constitute a cause for discipline, including termination of employment.
(b) Any person who intentionally provides any record containing personal information to any unauthorized person in violation of any provision of this division shall be guilty of a misdemeanor and be fined not more than five thousand dollars ($5,000.00) per occurrence, or imprisoned not more than one year, or both.
(c) Any person who requests or obtains any record containing personal or confidential information from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than five thousand dollars ($5,000.00) per occurrence, or imprisoned not more than one year, or both.

A patient or plan member whose PHI/ePHI has been unlawfully acquired, accessed, used, disclosed, shared, or reproduced may sue the person responsible and recover actual damages as well as punitive damages, plus attorney fees and court costs.
Security and Confidentiality Agreement
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Any person who violates HIPAA or state or federal Privacy laws or SCVHHS or County Privacy policies shall be subject to disciplinary action, up to and including termination, and, if appropriate, will be reported to the California Department of Public Health (CDPH) and the Secretary of the Department of Health and Human Services (DHHS), and depending on the circumstances of the violation, may be reported to a licensing or certification board and/or law enforcement agency.

As a SCVHHS employee, contractor, volunteer, student, vendor, or other person or entity employed by or doing business with SCVHHS, I have both a legal and ethical responsibility to protect the privacy of the PHI/ePHI of patients and plan members. All information that I see or hear regarding patients or plan members, directly or indirectly, is completely confidential and I will not be discuss or release it in any form, except when required in the performance of my duties or when authorized or required by law.

Additionally, if I have access to confidential employee information or financial information or any other proprietary information, I am expected to treat the confidentiality of such information in the same manner as patient/plan member PHI/ePHI.

I understand and agree that in the performance of my duties at SCVHHS, I must hold patient, employee, and proprietary information in confidence as outlined above. I understand that any violation of confidentiality may result in disciplinary action up to and including termination according to County policy. Any breach, on or off duty, of this agreement will be taken seriously.

By signing this Security and Confidentiality Agreement, I agree to access, use, disclose, share, and/or reproduce a patient’s or plan member’s PHI/ePHI only as permitted in the performance of my duties, and only as authorized by the patient or as permitted or required by law.

Signature: ___________________________ Date: ___________________________

Printed Name: ________________________________

References:

1. Health Insurance Portability & Accountability Act (HIPAA), Public Law 104-191
3. HIPAA Enforcement Rule – Administrative Simplification
4. Civil Monetary Penalties 45 CFR, § 160.400 et seq., and Criminal Penalties 45 USC, § 1320d-6
5. American Recovery & Reinvestment Act – HITECH Act
6. California Constitution, Article 1, § 1
7. California Civil Code §§ 1798 et seq., Information Practices Act
8. California Civil Code, §§ 56.10-56.16, Confidentiality of Medical Information Act
9. California Welfare & Institutions Code § 5328
10. California Senate Bill 541 and Assembly Bill 211 (amends Health & Safety Code §§ 1280.1, 1280.3, and 1280.15
11. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR, Ch. 1, Part 2, §§ 2.1-2.67)