



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

**Kern Medical Center
1700 Mount Vernon Avenue
Conference Room 1058
Bakersfield, California 93306**

Regular Meeting
Wednesday, February 20, 2019

11:30 A.M.

BOARD TO RECONVENE

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz, Sistrunk
Roll Call:

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY KERN COUNTY HOSPITAL AUTHORITY STAFF. THE "CA" REPRESENTS THE CONSENT AGENDA. CONSENT ITEMS WILL BE CONSIDERED FIRST AND MAY BE APPROVED BY ONE MOTION IF NO MEMBER OF THE BOARD OR AUDIENCE WISHES TO COMMENT OR ASK QUESTIONS. IF COMMENT OR DISCUSSION IS DESIRED BY ANYONE, THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED IN LISTED SEQUENCE WITH AN OPPORTUNITY FOR ANY MEMBER OF THE PUBLIC TO ADDRESS THE BOARD CONCERNING THE ITEM BEFORE ACTION IS TAKEN.

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Also, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2))

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Griselda Rivas, Clinical Lab Assistant II and Laura Fuller, Clinical Lab Assistant II for extraordinary service – **MAKE PRESENTATION**

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on January 20, 2019 – **APPROVE**

CA

- 5) Minutes for Kern County Hospital Authority Board of Governors special meeting on February 11, 2019 – **APPROVE**

CA

- 6) Proposed Agreement with SCP 35, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of solar power for Sagebrush Medical Plaza, in an amount not to exceed \$4,800,000 over 25 years – **APPROVE; AUTHORIZE CHAIRMAN TO SIGN**

CA

- 7) Proposed Sales Order 1-6LCV8QM with Cerner Corporation, an independent contractor, for purchase of Workstations on Wheels for the Cerner Millennium Project from February 20, 2019 through February 19, 2023, in an amount not to exceed \$1,099,098 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Sales Order 1-6LC01PM with Cerner Corporation, an independent contractor, for purchase of additional equipment for the Cerner Millennium Project from February 20, 2019 through February 19, 2023, in an amount not to exceed \$287,324 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Schedule 11 to Agreement 2016-036 with Cerner Corporation, an independent contractor, for purchase of Nuance-Dragon Medical One Cloud Edition for the Cerner Millennium Project from February 20, 2019 through February 19, 2024, in an amount not to exceed \$820,950 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Agreement with Dell Financial Services LLC, an independent contractor, containing nonstandard terms and conditions, for lease of desktop computers for the Cerner Millennium Project from February 20, 2019 through February 19, 2023, in an amount not to exceed \$900,263 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed 2018 Comprehensive Annual Financial Report and 2018 Actuarial Valuation from Kern County Employees' Retirement Association –
RECEIVE AND FILE

CA

- 12) Proposed acceptance of donations from CSAC and Safety National risk funds for travel and related expenses to cover all costs for two Kern Medical Center employees to attend the California Hospital Association "Hospital Compliance Seminar" in Costa Mesa, California, on February 20, 2019 –
APPROVE; ADOPT RESOLUTION

CA

- 13) Proposed acceptance of donations from CSAC and Safety National risk funds for travel and related expenses to cover all costs for one Kern Medical Center employee to attend the American Society for Health Care Risk Management "2019 ASHRM Academy" in Phoenix, Arizona, from April 1-2, 2019 –
APPROVE; ADOPT RESOLUTION

- 14) Request to employ retired Kern County Hospital Authority employee Tina Anderson, as Extra Help Senior Paralegal, for the period ending June 30, 2019, or 960 hours, whichever occurs first, effective March 1, 2019 – APPROVE
- 15) Proposed Report of Independent Auditors from Moss-Adams LLP, an independent contractor, regarding the audit of Kern Medical Center financial statements for the year ending June 30, 2018 – RECEIVE AND FILE; REFER TO KERN COUNTY BOARD OF SUPERVISORS
- 16) Proposed establishment of a treasury outside the Kern County Treasury Pool, effective March 1, 2019; approval of a revolving line of credit with PNC Bank, National Association (PNC Bank) in a principal amount not to exceed \$20,000,000 from March 1, 2019 through June 30, 2019, \$50,000,000 from July 1, 2019 through October 31, 2019, and \$20,000,000 at any other time; approval of Credit Agreement, General Security and Pledge Agreement, and Deposit Account Control Agreements with PNC Bank; and delegating authority to certain officers – APPROVE; ADOPT RESOLUTION; AUTHORIZE AND DIRECT ANY TWO OF THE FOLLOWING OFFICERS (EACH, AN “AUTHORIZED OFFICER”), FOR AND IN THE NAME OF AND ON BEHALF OF THE AUTHORITY, TO EXECUTE THE CREDIT AGREEMENT, THE GENERAL SECURITY AND PLEDGE AGREEMENT, AND EACH OF THE DEPOSIT ACCOUNT CONTROL AGREEMENTS, SUBSTANTIALLY IN THE FORM PRESENTED TO THIS BOARD, WITH SUCH CHANGES AS THE AUTHORIZED OFFICERS EXECUTING THE SAME, TOGETHER WITH THE VICE PRESIDENT & GENERAL COUNSEL OF THE AUTHORITY, SHALL APPROVE: CHAIRMAN OF THIS BOARD, VICE-CHAIRMAN OF THIS BOARD, CHIEF EXECUTIVE OFFICER OF THE AUTHORITY, CHIEF STRATEGY OFFICER OF THE AUTHORITY OR CHIEF FINANCIAL OFFICER OF THE AUTHORITY; REFER TO KERN COUNTY BOARD OF SUPERVISORS WITH REQUEST TO AUTHORIZE THE KERN COUNTY HOSPITAL AUTHORITY TO ESTABLISH ITS OWN TREASURY, SEPARATE AND APART FROM THE KERN COUNTY TREASURY POOL, AND INCUR DEBT, EFFECTIVE MARCH 1, 2019
- 17) Kern County Hospital Authority Chief Financial Officer report – RECEIVE AND FILE
- 18) Kern County Hospital Authority Chief Executive Officer report – RECEIVE AND FILE
- 19) Proposed retroactive Agreement with Meridian Healthcare Partners, Inc., an independent contractor, for Chief Executive Officer and healthcare management services from December 16, 2018 through December 15, 2025, in an amount not to exceed \$10,236,252 for the period December 16, 2018 through December 15, 2020 – APPROVE; AUTHORIZE VICE CHAIRMAN TO SIGN

CA

- 20) Claims and Lawsuits Filed as of January 31, 2019 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 21) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 22) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) –
- 23) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Officer, and designated staff – Employee organizations: Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6) –
- 24) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, MARCH 20, 2019, AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

All agenda item supporting documentation is available for public review at Kern Medical Center in the Administration Department, 1700 Mount Vernon Avenue, Bakersfield, 93306 during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday, following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

The Kern Medical Center Conference Room is accessible to persons with disabilities. Disabled individuals who need special assistance to attend or participate in a meeting of the Kern County Hospital Authority Board of Governors may request assistance at Kern Medical Center in the Administration Department, 1700 Mount Vernon Avenue, Bakersfield, California, or by calling (661) 326-2102. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting material available in alternative formats. Requests for assistance should be made five (5) working days in advance of a meeting whenever possible.

20) CLAIMS AND LAWSUITS FILED AS OF JANUARY 31, 2019 –
RECEIVE AND FILE

- A) Claim in the matter of Megan Sosnowski
- B) Claim in the matter of Jon Fitzgerald
- C) Petition for Order Permitting a Late Claim Against a Governmental Entity in the matter of Alizae Bagsby, a minor v. Kern County Hospital Authority
- D) Complaint for Damages in the matter of Stacy Pierson, an individual v. Kern Medical Surgery Center, LLC, et al., Kern County Superior Court Case No. BCV-19-100197



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

**Kern Medical Center
1700 Mount Vernon Avenue
Conference Room 1058
Bakersfield, California 93306**

**Regular Meeting
Wednesday, January 16, 2019**

11:30 A.M.

BOARD RECONVENED

Directors Present: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz, Sistrunk
Directors Absent: None

NOTE: The vote is displayed in bold below each item. For example, Lawson-McLaughlin denotes Director Lawson made the motion and Vice Chair McLaughlin seconded the motion.

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" WERE CONSIDERED TO BE ROUTINE AND APPROVED BY ONE MOTION.

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Also, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

NO ONE HEARD

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2))

DIRECTOR BERJIS WELCOMED DIRECTOR RYAN ALSOP TO THE BOARD OF GOVERNORS

DIRECTOR BERJIS NOTED THE ARTICLE IN THE BAKERSFIELD CALIFORNIAN REGARDING THE “STRONG RECOVERY FOR KERN MEDICAL CENTER” AND CONGRATULATED RUSSELL JUDD AND HIS STAFF ON THEIR SUCCESS

CHAIRMAN BIGLER THANKED RUSSELL JUDD AND HIS TEAM FOR HOSTING THE TOWN HALL MEETING ON JANUARY 11 WITH THE UCLA SCHOOL OF MEDICINE DEAN DR. KELSEY MARTIN AND VICE DEAN FOR EDUCATION DR. CLARENCE H. BRADDOCK III

RECOGNITION

- 3) Presentation of service awards by the Chief Executive Officer to eleven Kern Medical Center employees with 25, 30, and 35 years of service –
MADE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on December 12, 2018 –
APPROVED
Pelz-Sistrunk: All Ayes

CA

- 5) Proposed Change Order No. 8 to Agreement 056-2018 with Anderson Group International, an independent contractor, for construction management services related to the Pharmacy USP 797 Clean Room modifications, increasing the maximum payable by \$28,803, from \$705,941 to \$729,152, to cover the cost of additional services –
MADE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED;
AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 001-2019; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN CHANGE ORDER NO. 9 IN AN AMOUNT NOT TO EXCEED \$30,000
Pelz-Sistrunk: All Ayes

CA

- 6) Proposed Agreement with CIOX Health, LLC, an independent contractor, containing nonstandard terms and conditions, for medical records copying services from January 16, 2019 through January 15, 2022, in an amount not to exceed \$225,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 002-2019
Pelz-Sistrunk: All Ayes

CA

- 7) Proposed Amendment No. 4 to Agreement 620-2009 with Craneware, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of Trisus software licenses to maximize coding and billing processes, for the period June 30, 2009 through June 29, 2022, increasing the maximum payable by \$49,462, from \$2,556,151 to \$2,605,613, to cover the term, effective January 17, 2019 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 003-2019
Pelz-Sistrunk: All Ayes

CA

- 8) Proposed Agreement with Patrick G. Pieper, M.D., a contract employee, for professional medical services in the Department of Surgery from February 1, 2019 through January 31, 2022, in an amount not to exceed \$1,791,000, plus applicable benefits – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 004-2019
Pelz-Sistrunk: All Ayes

CA

- 9) Proposed Amendment No. 2 to Agreement 14818 with Healthcare Performance Group, Inc., an independent contractor, for consulting services related to the Cerner Millennium project, for the period June 11, 2018 through June 10, 2019, increasing the maximum payable by \$300,240, from \$450,000 to \$750,000, to cover the term, effective January 16, 2019 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 005-2019
Pelz-Sistrunk: All Ayes

CA

- 10) Proposed retroactive Resolution reaffirming the appointment of Russell V. Judd, Andrew J. Cantu, Alton Scott Thygerson, Jared W. Leavitt, Glenn E. Goldis, M.D., and Antoinette C. Smith, RN, MSN, to serve as officers of the Kern County Hospital Authority – APPROVED; ADOPTED RESOLUTION 2019-001
Pelz-Sistrunk: All Ayes

- 11) Kern County Hospital Authority Chief Financial Officer report – RECEIVED AND FILED
Berjis-Sistrunk: All Ayes

- 12) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED
Brar-Pelz: All Ayes

CA

- 13) Claims and Lawsuits Filed as of December 31, 2018 –
RECEIVED AND FILED
Pelz-Sistrunk: All Ayes

- 14) Proposed retroactive Agreement with Meridian Healthcare Partners, Inc., an independent contractor, for Chief Executive Officer and healthcare management services from December 16, 2018 through December 15, 2025, in an amount not to exceed \$10,236,768 for the period December 16, 2018 through December 15, 2020 –
CONTINUED TO FEBRUARY 20, 2019

ADJOURNED TO CLOSED SESSION
McLaughlin-Berjis

CLOSED SESSION

- 15) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – SEE RESULTS BELOW
- 16) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – SEE RESULTS BELOW
- 17) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Genovenva Robles, et al. v. Kern Medical Center, et al., Kern County Superior Court Case No. BCV-17-102395 TSC – SEE RESULTS BELOW
- 18) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – SEE RESULTS BELOW
- 19) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd and designated staff – Employee organizations: Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION
Berjis-Pelz

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 15 PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 16 CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 17 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Genovenva Robles, et al. v. Kern Medical Center, et al., Kern County Superior Court Case No. BCV-17-102395 TSC – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 18 Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 19 CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd and designated staff – Employee organizations: Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, FEBRUARY 20, 2019, AT 11:30 A.M.

Sistrunk

/s/ Mona A. Allen
Authority Board Coordinator

/s/ Russell E. Bigler
Chairman, Board of Governors
Kern County Hospital Authority



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

**Kern Medical Center
1700 Mount Vernon Avenue
Conference Room 1058
Bakersfield, California 93306**

Special Meeting
Monday, February 11, 2019

10:30 A.M.

BOARD RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz, Sistrunk
ROLL CALL: 6 Present; 1 Absent - McLaughlin

NOTE: The vote is displayed in bold below each item. For example, Lawson-McLaughlin denotes Director Lawson made the motion and Vice Chair McLaughlin seconded the motion.

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Also, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

**ADJOURNED TO CLOSED SESSION
Pelz-Brar**

NOTE: Director McLaughlin arrived following adjournment to closed session

CLOSED SESSION

- 2) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Pelz-Berjis

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 2 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, FEBRUARY 20, 2019, AT 11:30 A.M.

Sistrunk

/s/ Mona A. Allen
Authority Board Coordinator

/s/ Russell E. Bigler
Chairman, Board of Governors
Kern County Hospital Authority



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2018

Subject: Proposed Solar Power Purchase Agreement with SCP 35, LLC

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board's approval of the proposed Solar Power Purchase Agreement with SCP 35, LLC, a Delaware Limited Liability Corporation, for the purchase of power from a 617 Killowattpeak photovoltaic energy system, installed on the roof and south parking lot at Kern Medical's Columbus Clinic location, 1111 Columbus Street.

SCP 35, LLC will contract with Alpha Energy Management, Inc. for the construction of the system, which will be owned and maintained by SCP 35, LLC. This agreement also includes funds that will be used for the re-coating of the roof at the Columbus Clinic location, including a 20-year warranty, to support the system.

The term of the proposed agreement will be for 25 years, effective on the date of the seller's signature, at which time, the Authority will be able to purchase the system at a pre-agreed amount, not to exceed Fair Market Value. The not-to-exceed cost to the Authority will be \$4.8 million for the 25 year term.

The Agreement contains non-standard terms and cannot be approved as to form by Counsel due to the late fees, no warranty, a termination fee (if terminated prior to end of term), and waiver of jury trial.

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	Kern County Hospital Authority 1700 Mt. Vernon Avenue Bakersfield, California 93306 Attention: Russell E. Bigler	Name and Address	SCP 35 LLC 99 Almaden Blvd, Suite 720 San Jose, CA 95113 Attention: Legal Dept
Phone	(661) 326-2102	Phone	(408) 462-1723
Fax	(661) 326-2100	Fax	(408) 758-6369
E-mail	contracts@kernmedical.com	E-mail	legal@scf.com
Premises Ownership	Purchaser owns* the Premises.	Additional Seller Information	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed to provide power to the Purchaser’s facility described in **Exhibit 2** (the “**Facility**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Basic Terms and Conditions
- Exhibit 2** System Description
- Exhibit 3** Credit Information
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Form of Memorandum of License
- Exhibit 6** Form of Easement Agreement

Purchaser: Kern County Hospital Authority (a/k/a Kern Medical Center), a local unit of government

Seller: SCP 35 LLC, a Delaware limited liability company

Signature: _____

Signature: _____

Printed Name: Russell E. Bigler

Printed Name: Shiraz Madan

Title: Chairman, Board of Governors

Title: Manager

Date: _____

Date: _____

**See Section Exhibit 4, Section 14.b.i*

Exhibit 1
Basic Terms and Conditions

1. **Term:** Twenty-Five (25) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each.
3. **Environmental Incentives and Environment Attributes:** Accrue to Seller.
4. **Contract Price:**

Initial Term

Contract Year	\$/kWh
1	\$0.1250
2	\$0.1272
3	\$0.1294
4	\$0.1317
5	\$0.1340
6	\$0.1363
7	\$0.1387
8	\$0.1411
9	\$0.1436
10	\$0.1461
11	\$0.1487
12	\$0.1513
13	\$0.1539
14	\$0.1566
15	\$0.1594
16	\$0.1622
17	\$0.1650
18	\$0.1679
19	\$0.1708
20	\$0.1738
21	\$0.1768
22	\$0.1799
23	\$0.1831
24	\$0.1863
25	\$0.1896

Additional Terms

Contract Year	\$/kWh
26	\$0.1929
27	\$0.1962
28	\$0.1997
29	\$0.2032
30	\$0.2067
31	\$0.2104
32	\$0.2140
33	\$0.2178
34	\$0.2216
35	\$0.2255

5. **Condition Satisfaction Date:** June 30, 2019
6. **Anticipated Commercial Operation Date:** October 31, 2019

7. **Rebate Variance.** All prices in this Agreement are calculated based on an upfront rebate of \$0. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received.
8. **Purchaser Options to Purchase System.** None or as set forth in Section 16(b).
9. **Outside Commercial Operation Date:** March 31, 2020.
10. **System Installation:**

The Contract Price Includes:	Design, engineering, permitting, installation, monitoring, rebate application and paperwork processing of the System.
The Contract Price Excludes ¹ :	Limited Warranty. Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to the Facility or utility electrical infrastructure, light pole removal, concrete removal, hard rock drilling, replacement of service entry section/switchgear, payment bonds, performance bond(s), prevailing wage construction, tree removal, or tree trimming.

The Contract Price does not account for the costs of any excluded tasks (“Exclusions”). If the Seller is required to include any Exclusions in order to construct the System, then the Contract Price will be increased and Purchaser will enter into an amendment to this Agreement reflecting the increased Contract Price.

11. **Estimated Annual Payment:** Seller estimates the following annual payments. These estimates are for informational purposes only, and Seller does not warrant or guaranty the accuracy of the Estimated Annual Payment in any Contract Year.

Initial Term

Contract Year	Estimated Annual Payment (\$)
1	\$153,750.00
2	\$155,658.42
3	\$157,590.53
4	\$159,546.62
5	\$161,527.00
6	\$163,531.95
7	\$165,561.79
8	\$167,616.83
9	\$169,697.37
10	\$171,803.74
11	\$173,936.25
12	\$176,095.24
13	\$178,281.02
14	\$180,493.93
15	\$182,734.31
16	\$185,002.50
17	\$187,298.85
18	\$189,623.69
19	\$191,977.40
20	\$194,360.32
21	\$196,772.81
22	\$199,215.26
23	\$201,688.02
24	\$204,191.47
25	\$206,726.00

Additional Terms

Contract Year	\$/kWh
26	\$210,343.70

27	\$214,024.72
28	\$217,770.15
29	\$221,581.13
30	\$225,458.79
31	\$229,404.32
32	\$233,418.90
33	\$237,503.73
34	\$241,660.05
35	\$245,889.10

Exhibit 2
System Description

1. **System Location:** 1111 Columbus St., Bakersfield, CA 93305
2. **Facility:** Kern Medical Center
3. **System Size (DC kW):** 617.00 kWp
4. **Expected First Year Energy Production (kWh):** 1,025,000 kWh
5. **Expected Structure:** Ground Mount* Roof Mount Parking Structure Other

6. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
[...]	[...]

7. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
[...]	[...]

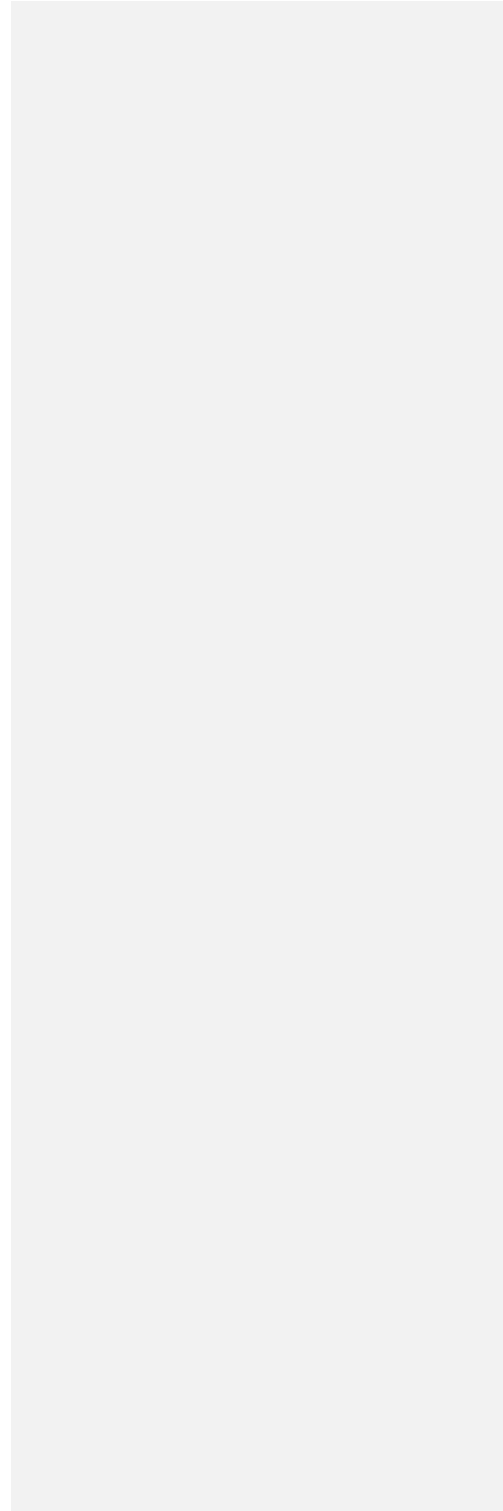
8. **Facility, Premises and System Layout:** See [Exhibit 2, Attachment A](#)
9. **Utility:** Pacific Gas & Electric

*A six foot chain link fence is required for all ground mount structures

Exhibit 2
Attachment A:
Facility and System Layout

An Aerial Photograph of the Facility and the Premises	See below
Conceptual Drawing of the System	See below
Delivery Point	See below
Access Points	See below

[INSERT IMAGE OF SYSTEM/FACILITY]



**Exhibit 3
Credit Information**

Promptly following the execution of this Agreement, Purchaser shall supply Seller with the following credit information:

PURCHASER INFORMATION							
Name: Kern County Hospital Authority (a/k/a Kern Medical Center), a local unit of government0					Tax ID: 47-5618278		
Previous & Other Names:				Website: https://www.kernmedical.com/			
Corporate Address: 1700 Mt. Vernon Avenue							
City, State, Zip Bakersfield, California 93306							
Phone Number: (661) 326-2102				Fax Number: (661) 326-2100			
Entity Type Check One:	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other - Government
Property Address for Solar Installation: 1111 Columbus Street				City/State: Bakersfield, CA	Zip Code: 93305	Property Owned by Applicant <input type="radio"/> YES <input type="radio"/>	
Property Type – Commercial Building	Insurance Agent Name – Self insured			Agents Phone: () - -	Name of Property Owner if Not Applicant		
Information Requested: Please submit the information required below via electronic format to legal@scf.com.							
<u>Corporate Records</u>							
<input type="checkbox"/> Copy of Articles of Incorporation, By Laws, Partnership Agreement, Signed Board Resolution, Fictitious Name Statement or Organizational formation Documents (If applicable).							
<u>Financial Statements</u>							
<input type="checkbox"/> Last three (3) years of CPA audited financial statements (Balance Sheet, Income Statement, Cash Flow).							
<u>Real Estate Documents</u>							
<input type="checkbox"/> If applicable, copies of any lease with the fee owner of the Premises, or any lessor with a superior leasehold interest in the Premises (each a "Lease")							
<input type="checkbox"/> Copies of mortgages, deeds of trust or other liens or security interests in the Premises, or any other encumbrances that could affect Seller's rights to the Premises granted hereunder or in the Easement Agreement, or Seller's ability to own or operate the System (collectively, "Encumbrances")							
<input type="checkbox"/> Copies of recent ALTA survey and Phase I ESA							
Seller may request you provide additional documentation to complete the credit evaluation process. Seller will notify you if additional information is required.							

The above information and any information attached is furnished to Seller and its Financing Parties in connection with the Application of credit for which you may apply or credit you may guarantee. You acknowledge and understand that the Seller is relying on this information in deciding to grant or continue credit or to accept a guarantee of credit. You represent, warrant and certify that the information provided herein is true, correct and complete. The Seller is authorized to make all inquiries deemed necessary to verify the accuracy of the information contained herein and to determine your creditworthiness. You authorize any person or consumer-reporting agency to give the Seller any information it may have about you. You authorize the Seller to answer questions about its credit experience with you. Subject to any non-disclosure agreement between you and Seller, this form and any other information given to the Seller shall be the Seller's property. If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact Seller at (408) 462-1723. You must contact us within 60 days from date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. Seller is an equal opportunity lender.

Signature:

Title:

Date:

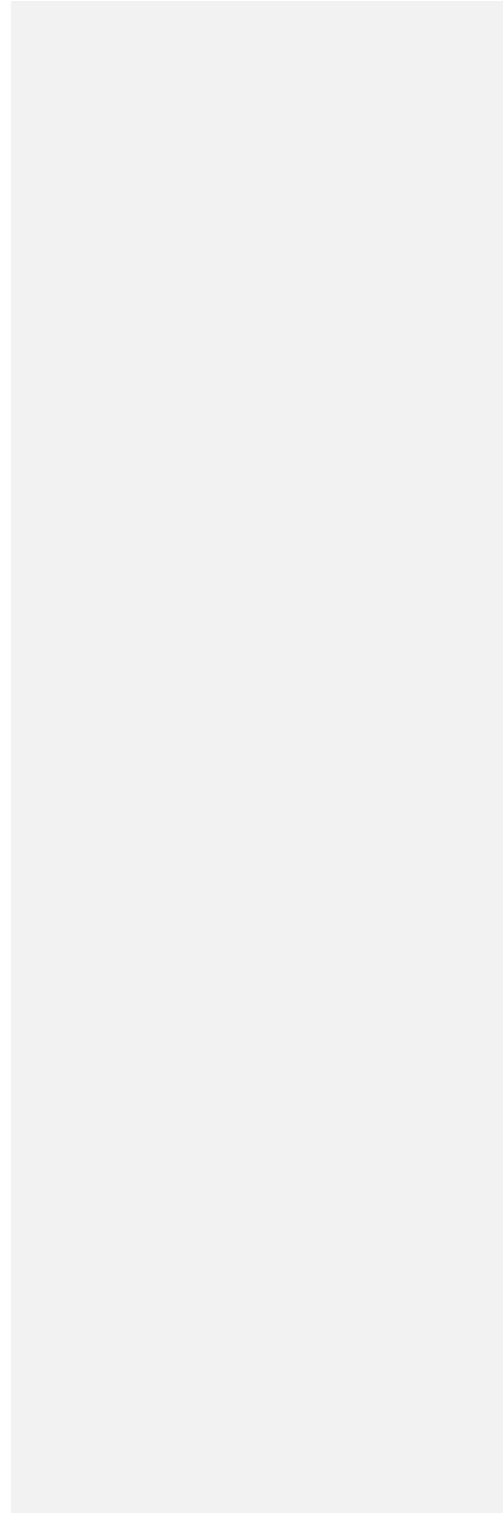


Exhibit 4
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “**Delivery Point**”). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser’s electric requirements at the Facility exceed the output of the System. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.
3. **Term and Termination.**
 - a. **Initial Term.** The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser’s request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller’s contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the “**Utility**”), as set forth on **Exhibit 2**. This Agreement is effective as of the Effective Date and Purchaser’s failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.
 - b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an “**Additional Term**”). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party’s offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
 - c. **Early Termination for Non-Appropriation of Funds.**
 - i. Purchaser reserves the right to terminate this Agreement for non-appropriation of funds under the provisions of the California Constitution, Article XVI, Section 18(a); *provided*, however, that Purchaser, as a government entity, intends to appropriate funds sufficient to cover the Estimated Annual Payment in its annual budget (in addition to its annual energy/utility budget) for each fiscal year, which is July 1 to June 30 of each calendar year. Purchaser reasonably believes that legally available funds in an amount sufficient to pay the Estimated Annual Payment and, if applicable, the Termination Payment can be obtained for each fiscal year. Purchaser covenants that, in the event any payment hereunder (including payment of the Termination Payment) is or becomes subject to or requires any necessary appropriation, Purchaser shall use its best efforts to appropriate necessary funds to satisfy such obligations, and not to discriminate between such obligations and its other obligations with respect to payments for similar necessary and essential services.

- ii. Purchaser shall provide Seller with 90 days' prior written notice if Purchaser does not intend to appropriate funds in its annual budget sufficient to cover the Estimated Annual Payment (in addition to its annual energy/utility budget) in any fiscal year. If Purchaser terminates the Agreement under Section 3(c)(i), for a period of five (5) years Purchaser agrees to not enter into any power purchase agreements or similar arrangements with any third-party for the procurement of electricity for the Kern Medical Center. The preceding sentence is intended to survive the termination of this Agreement.
- iii. Seller reserves the right (but is not required to) terminate the Agreement if Purchaser fails to appropriate funds sufficient to cover the Estimated Annual Payment (in addition to its annual energy/utility budget) in any fiscal year's final annual budget. If Purchaser's final annual budget for any fiscal year appropriates funds that will cover only a portion of that year's Estimated Annual Payment, Purchaser and Seller shall negotiate in good faith to fulfill the remaining Agreement terms for that fiscal year and recoup any shortfalls in future appropriations.
- iv. If Purchaser or Seller terminates the Agreement per this Section 3(c), Purchaser shall be liable for the Termination Payment under the provisions of Section 13(b)(iii)(A). Upon such termination, Purchaser will be released from any further financial obligation to Seller, except for: (a) the Termination Payment; (b) to the extent not covered by the Termination Payment, compensation for services performed or for electric energy delivered prior to the date of termination; and (c) any liability due to any Default existing at the time of termination.

4. **Billing and Payment.**

- a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.
- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty five dollar (\$25) handling charge will be added to each invoice.
- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on (i) the System, (ii) the generation, sale, delivery or consumption of electric energy produced by the System, or (iii) the interconnection of the System to the Utility's electric distribution system, including, if applicable, pursuant to the Energy Resources Surcharge Law (Title 18 of California Code of Regulations, §§ 40001-40216); provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure or as a result of Purchaser's acts or omissions. For purposes of this **Section 4(c)**, "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues by a Governmental Authority due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of the greater of fifteen percent (15.00%) or the WSJ Prime Rate plus two and three-fourths percent (2.75%), as published in the Wall Street Journal (but in any event not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on **Exhibit 1**, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of

solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

"Environmental Incentives" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

"Tax Credits" means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. Conditions to Obligations.

- a. **Conditions to Seller's Obligations.** Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:
- i. Completion of a physical inspection of the property upon which the System will be located (the **"Premises"**) and the Facility, including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
 - ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. **"Construction Agreement"** as used in this subsection means an agreement between Seller and any contractor or subcontractor to install and construct the System;
 - iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
 - iv. Receipt of all necessary zoning, land use and building permits;
 - v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility's electric distribution system;
 - vi. Receipt of Board approval, ratifying Purchaser's intent to enter this Agreement, and confirmation the Board has approved appropriation of funds to satisfy payment obligations under this Agreement;
 - vii. Execution of all necessary real estate agreements for Seller to enjoy unencumbered access to the Facility and the Premises, in form and substance satisfactory to Seller, including but not limited to (A) the Easement Agreement, and (B) with respect to any Lease or Encumbrances, the subordination to, or non-disturbance of, Seller's rights under the Easement Agreement; and

viii. Roof condition assessment performed by Seller approved roofing contractor that states the roof has a remaining lifespan of minimum 6 years. Purchaser is responsible for roof repairs or replacement to increase the lifespan to at least 6 years prior to installation. If Purchaser does not meet the 6 year lifespan condition, Seller may terminate this agreement without bearing any costs.

- b. **Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then Seller may terminate this Agreement upon ten (10) days written notice to Purchaser without liability for costs or damages or triggering a default under this Agreement.
- c. **Commencement of Construction.** Seller's obligation to commence construction and installation of the System is conditioned on Seller's receipt of (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller's rights under this Agreement for as long Seller is not in default hereunder and (C), a signed and notarized original copy of the easement agreement suitable for recording, substantially in the form attached hereto as **Exhibit 6** (the "**Easement Agreement**").
- d. **Conditions to Purchaser's Obligations.** Purchaser's obligations under Section 4(a) are conditioned on the occurrence of the Commercial Operation Date for the System by the Outside Commercial Operation Date; provided that the Outside Commercial Operation Date shall be automatically extended on a day for day basis for each day of Force Majeure or any other delay caused by the Purchaser, the Utility, any Governmental Authority, or any third party.

Notwithstanding anything to the contrary in this Agreement, once Seller commences construction of the System, so long as the Seller is using commercially reasonable efforts to achieve the Outside Commercial Operation Date, the condition under this Section 6(d) will be deemed to have been satisfied.

7. **Seller's Rights and Obligations.**

- a. **Permits and Approvals.** Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:
- i. any zoning, land use and building permits or approvals required to construct, install and operate the System ("**Permits**") required by any Governmental Authority; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.
- Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Permits and any such agreements and approvals from the Utility, and shall at its own cost and expense obtain any land use and building permits required to construct, install and operate the System required by any Governmental Authority.
- b. **Standard System Repair and Maintenance.** Seller shall cause the construction and installation the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.
- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within forty-eight (48) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the

System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.

- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

8. **Purchaser's Rights and Obligations.**

- a. **License¹ to the Premises; Facility Access Rights.** Without limiting Seller's rights under the Easement Agreement, Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises. The License authorizes Seller to access the Premises for the purposes of inspecting and investigating the Premises prior to commencement of the Easement Agreement and for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, altering, protecting, repairing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall commence on the Effective Date and continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement, except in the case of a Default Event by Purchaser and the subsequent termination by Seller of this Agreement, in which case the term shall continue until the date that is one hundred and twenty (120) days following the thirty (30) anniversary of the Commercial Operation Date (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor shall it permit any third parties to interfere with such rights or access. Purchaser expressly and irrevocably waives its right to exclude Seller and Seller's agents, employees, contractors and assignees from the Premises, or from any portion of the Premises if such exclusion would deprive Seller of the rights granted by the License. The grant of the License shall survive termination of this Agreement by either Party. At request of Seller, Purchaser shall execute a memorandum of License, and which shall be in form and substance set forth **Exhibit 5**, or other form agreed to by the parties. Seller may, at its sole cost and expense, record such memorandum of License with the appropriate land registry or recorder's office. The rights

¹ The Agreement provides for access to the Premises through a license. However, it is recognized that both parties may prefer for access to the Premises to be provided through an easement, lease or sublease.

granted under this License shall be independent of, and shall not merge with, the rights granted under the Easement Agreement.

- b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the Utility's electric distribution system at all times and will not cause cessation of electric service to the Facility from the Utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility that could adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 10(b). All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; **provided, however,** that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall be in accordance with the procedures in Section 10(b).
- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 19.a), Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.

- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight (“**Insolation**”) is essential to Seller’s performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System’s Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System’s existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8(h) against Purchaser.
- i. **Data Line.** Purchaser shall provide Seller a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.
- j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- k. **Purchaser Financial Statements.** Within ten (10) days after Seller’s written request therefor, but not more than once a year, Purchaser shall deliver to Seller a copy of the financial statements (including at least a year end balance sheet, a statement of profit and loss, and a statement of cash flows) of Purchaser and of any guarantor of Purchaser’s obligations under this Agreement for the most recently completed year, prepared in accordance with generally accepted accounting principles (audited by an independent certified public accountant), all then available subsequent interim statements, and such other financial information as may reasonably be requested by Seller. Any information that Purchaser discloses to Seller under this Section 8(k) shall be Confidential Information subject to Section 20. Purchaser shall provide assurance as reasonably requested by the Seller, if the Seller has reasonable grounds for insecurity with respect to the financial performance of the Purchaser and demands adequate assurance of due financial performance.

9. **Change in Law.**

“**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority that in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller’s obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties, including but not limited to an equitable adjustment to the Contract Price to compensate Seller for increased costs over the remainder of the Term. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. **Relocation of System.**

- a. **System Relocation.** If Purchaser ceases to conduct business operations at the Facility, or otherwise vacates the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same utility district as the terminated System or in a location with similar utility

rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be equal to the remainder of the Term of this Agreement calculated starting at the shutdown of the System pursuant to such relocation, and shall toll until the relocated System achieves commercial operation of such new location. Such amended agreement shall be deemed to be a continuation of this Agreement without termination. In addition, Purchaser shall be obligated to provide a new executed and notarized easement agreement covering the substitute premises in form and content substantially similar to the Easement Agreement. Purchaser shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties in connection with the substitute premises.

- b. Costs of Relocation. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the relocation; (ii) revenues that Seller would have received with respect to the System under any rebate program and any other assistance program with respect to electric energy that would have been produced during the relocation; ; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during the relocation; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the relocation. Determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology. "**Contract Year**" means the twelve month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.
- c. Adjustment for Insolation; Termination. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to Exhibit 1 such that Purchaser's payments to Seller are the same as if the System were located at the original Facility, increased to the extent necessary to compensate Seller for reduced revenues from Environmental Attributes and reduced Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) receive as a result of the relocation. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

11. Removal of System at Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), except unless due to a Default Event by Seller, Seller shall not be required to remove the System from the Premises and the System may remain in place for a period of thirty (30) years from the Commercial Operation Date and all access rights to the Premises set forth herein and in the Easement Agreement shall remain in place for such period. After such period, Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than one hundred and eighty (180) days after the expiration of the period of thirty (30) years from the Commercial Operation Date. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and perform Seller's obligations under this Section 11 at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Measurement.

Seller shall install one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Seller shall maintain the meter(s) in accordance with industry standards.

13. Default, Remedies and Damages.

a. Default. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the “**Defaulting Party**”, the other Party shall be deemed to be the “**Non-Defaulting Party**”, and each event of default shall be a “**Default Event**”:

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
- ii. failure of a Party to substantially perform any other material obligation under this Agreement within ninety (90) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such ninety (90) day cure period shall be extended (but not beyond one hundred and eighty (180) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the ninety (90) day period and continues such cure to completion and (B) there is no uncompensated material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. Purchaser loses its rights to occupy and quietly enjoy the Premises;
- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within ninety (90) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- vi. Purchaser prevents Seller from installing the System (other than Seller’s failure to comply with any Permit) or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.
- vii. Purchaser or Purchaser’s affiliate, as applicable, is a “Defaulting Party” under any power purchase agreement or other contract to which Seller or Seller’s affiliate is a party.

b. Remedies.

- i. **Remedies for Payment Default.** If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
- ii. **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party’s right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this contract without cause prior to commencement of System installation a twenty-five thousand dollar (\$25,000) design cancellation fee shall also apply in addition to any other remedy available to Seller.

iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):

- A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the greater of, for any given Contract Year, (a) Fair Market Value of the System, (b) the amount set forth on Exhibit 4, Attachment A attached hereto, (c) the amount owed to any Financing Party upon termination pursuant to the applicable financing documents, or (d) the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty five percent (35%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of (6%)) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. Notwithstanding the foregoing, the Termination Payment shall not be less than the Fair Market Value of the System at the time of the applicable Default Event. Notwithstanding the foregoing, if Seller terminates this Agreement prior to commencement of construction of the System, Purchaser shall be obligated to pay Seller 110% of Seller’s out-of-pocket costs and expenses, including but not limited to its reasonable attorneys’ fees, incurred in connection with this Agreement and the transactions contemplated hereby.
- B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate of the lesser of (x) WSJ Prime Rate + 4.00% and (y) 6%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Purchaser, and (4) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero².
- C. Obligations Following Termination. If Seller is the Defaulting Party and Purchaser terminates this Agreement, then following such termination, Seller shall, at its sole cost and expense, remove the equipment (except for mounting pads and support structures) constituting the System. Purchaser shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event. If Purchaser is the Defaulting Party and Seller terminates this Agreement, then following such termination, Seller shall not be required to remove the System from the Premises and the System may remain in place for a period of thirty (30) years from the Commercial Operation Date and all access rights to the Premises set forth herein and in the Easement Agreement shall remain in place for such period.

² If Purchaser is also taking the Environmental Attributes, the cost of replacement Environmental Attributes will also have to be taken into account.

- c. **Change in Assumptions.** If any Adjustment Event occurs, as defined below, then the Parties shall, within thirty (30) days following receipt by both Parties of notice of such an Adjustment Event, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination. For purposes of this Section 13(c), each event listed below shall be an “Adjustment Event”:
- i. Prior to the Commercial Operation Date, an independent engineer or Seller finds that the estimated production output of the System shall be less than the Expected First Year Energy Production;
 - ii. Prior to the Commercial Operation Date, an appraisal or valuation performed on the System does not support the estimated eligible basis for associated Tax Credits;
 - iii. Prior to the Commercial Operation Date, an Exclusion is required to complete the System; and
 - iv. Prior to the Commercial Operation Date, Seller determines this Agreement no longer meets or exceeds economic expectations due to further due diligence.

14. **Representations, Warranties and Covenants.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following as of the Effective Date:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors’ rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. **Purchaser’s Representations, Warranties and Covenants.** Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:
- i. **License.** Purchaser has title to or a leasehold or other property interest in the Premises. Any reference in this Agreement to Purchaser’s interest a “fee” interest shall mean Purchaser’s rights in and to the Premises as aforesaid. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Purchaser will obtain a subordination or non-disturbance agreement from the lessor of any Lease and the grantee of each Encumbrance in form and substance satisfactory to Seller. The grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any Lease, Encumbrance or any other agreement by which Purchaser is bound or that affects the Facility. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
 - ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
 - iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to the Facility’s physical configuration, Purchaser’s planned use of the Facility, and Purchaser’s estimated electricity requirements, is accurate in all material respects.
 - iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

- v. Hazardous Substances. There are no Hazardous Substances at, on, above, below or near the Premises.
- vi. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

15. System and Facility Damage and Insurance.

a. System and Facility Damage.

- i. Seller's Obligations. If the System is damaged or destroyed other than by Purchaser's negligent act or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the greater of (1) the Fair Market Value of the System, (2) the sum of the amounts described in Section 13.b.iii.A)(1) and Section 13.b.iii.A)(3), and (c) for any given Contract Year, the amount set forth on Exhibit 4, Attachment A attached hereto.
- ii. Purchaser's Obligations. If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's negligent act or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall either promptly repair and restore the Facility to its pre-existing condition or pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. Insurance Coverage. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. Seller's Insurance. Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (D) workers' compensation insurance as required by law.
- ii. Purchaser's Insurance. Purchaser shall maintain commercial general liability insurance with coverage of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.

c. Policy Provisions. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party. Purchaser self-insures as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Purchaser, upon request of Seller, shall forward documentation to Seller that demonstrates that Purchaser self-insures as a matter of normal business practice. Seller will accept reasonable proof of self-insurance comparable to the above requirements.

d. Certificates. Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. Deductibles. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. Ownership; Option to Purchase.

- a. Ownership of System. Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes (unless otherwise specified on Exhibit 1), and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property (as such term is defined under Article 9 of the Uniform Commercial Code as enacted by the state of California). Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest

in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.

- b. **Option to Purchase.** At the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the greater of (a) Fair Market Value of the System or (b) the amount owed to any Financing Party upon termination pursuant to the applicable financing documents. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.
- c. **Determination of Fair Market Value.** "Fair Market Value" means, in Seller's reasonable determination, the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, (ii) for any given Contract Year, the amount set forth on Exhibit 4, Attachment B attached hereto, and (iii) the present value (using a discount rate of six percent (6%)) of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, and Tax Credits and factoring in future costs and expenses associated with the System avoided. Seller shall determine Fair Market Value within thirty (30) days after Purchaser has exercised its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties; provided that in no event shall the amount paid to purchase the System be less than the amount owed to any Financing Party upon termination pursuant to the applicable financing documents as of the date of System title transfer. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

17. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to

liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “Claim”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.
- i. **“Hazardous Substance”** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**
- i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Seller is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Purchaser causes Seller to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.
- ii. **Actual Damages.** Except with respect to indemnification for third party claims pursuant to Section 17 and damages that result from the willful misconduct of Seller, Seller’s aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues. Notwithstanding anything to the contrary, Seller’s limitations of liability shall not apply to, affect, or limit: (i) any of Seller’s duties to indemnify Purchaser in accordance with this agreement and/or (ii) any third party claims.

- iii. Liability of Purchaser. The liabilities or obligations of Purchaser with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. California Health and Safety Code Section 101853(g)

18. Force Majeure.

- a. “**Force Majeure**” means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, (i) failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; (ii) war (declared or undeclared), sabotage, riot, insurrection, civil unrest, or disturbance; (iii) military or guerilla action; (iv) terrorism; (v) economic sanction or embargo; (vi) civil strike, work stoppage, slow-down, or lock-out; (vii) explosion; fire; earthquake, abnormal weather condition or actions of the elements such as hurricane; flood; lightning, wind; or drought; (viii) the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); (ix) the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); (x) unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and (xi) failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser’s ability to make payment.
- d. If a Force Majeure event continues occurs prior to the date Seller issued a notice to proceed to the Contractor and such Force Majeure event continues for a period of three hundred sixty-five (365) days (or ninety (90) days due to a Change in Law that is a Force Majeure event) or more within an eighteen (18) month period and such Force Majeure event (an “**Extended Force Majeure**”) prevents a material part of the performance by a Party hereunder, then the Party not claiming Force Majeure (except to the extent that the Force Majeure event is a Change in Law, under which circumstances, only Seller) shall have the right to terminate this Agreement without either Party having further liability under this Agreement except with respect to payment of amounts accrued prior to termination and actions or omissions that occur prior to termination and otherwise in accordance with Section 21.d; provided, that if such termination right is not exercised within thirty (30) days after the expiration of the thirty (30) day negotiation period, then such termination right shall automatically terminate upon the expiration of such thirty (30) day period and have no further force or effect with respect to the Extended Force Majeure. For a period of ninety (90) days following such termination, Seller shall have the right to remove such portion of the System as it desires, and the Easement Agreement shall not terminate until the end of such period.

19. Assignment and Financing.

- a. **Assignment.** This Agreement may not be assigned in whole or in part by Purchaser without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed. Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System, or (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller’s obligations hereunder by the assignee). However, any assignment of Seller’s right and/or obligations under this Agreement, shall not result in any change to Purchaser’s rights and obligations under this Agreement. Purchaser’s consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and

providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. In the event of any assignment in compliance with this [Section 19.a](#), the Seller shall be released from all its liabilities and other obligations under this Agreement.

- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. “**Financing Parties**” means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person, or Tax Equity investors or lenders. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to [Section 19\(a\)\(i\)-\(iv\)](#), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the “**Successor Provider**”). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.
- d. **Financing Accommodations.** In the event Seller collaterally assigns its rights hereunder to the Financing Party as security, any related Financing Party consent will contain provisions substantially as follows:
 - i. Seller and Purchaser will neither modify nor terminate the Agreement other than as provided therein, without the prior written consent of the Financing Party.
 - ii. The Financing Party shall have the right, but not the obligation, to do any act required to be performed by Seller under the Agreement, and any such act performed by the Financing Party shall be as effective to prevent or cure a default as if done by Seller itself.
 - iii. If Purchaser becomes entitled to terminate the Agreement due to an uncured Default Event by Seller, Purchaser shall not terminate the Agreement unless it has first given notice of such uncured Default Event to the Financing Party and has given the Financing Party the same cure periods afforded to Seller under this Agreement, plus an additional thirty (30) Days beyond Seller’s cure period to cure any monetary Default Event and an additional one hundred twenty (120) days beyond Seller’s cure period to cure any non-monetary Default Event; *provided*, if the Financing Party requires possession of the Project in order to cure the Default Event, and if the Financing Party diligently seeks possession, the Financing Party’s additional thirty (30) day or one hundred twenty (120) day cure period, as applicable, shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Financing Party.
 - iv. A Financing Party will not be obligated to perform, or be liable for, any obligation of Seller under the Agreement until and unless assumed through the exercise of the Financing Party’s rights and remedies.
 - v. Any Person assuming the Agreement through the exercise of the Financing Party’s rights and remedies shall remain subject to the terms of the Agreement and shall assume all of Seller’s obligations under the Agreement including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. If the Financing Party, or its successor, assumes the Agreement in accordance with this subparagraph (e), Purchaser shall continue the Agreement with the Financing Party or its successor, as the case may be, substituted wholly in the place of Seller.
 - vi. If the Financing Party, or its successor, assumes the Agreement in accordance with [Section 19.a](#), within ninety (90) Days of any termination of the Agreement in connection with any bankruptcy or insolvency Default Event of Seller, the Financing Party (or its successor) and Purchaser shall enter into a new power purchase agreement on the same terms and conditions as the Agreement and for the period that would have been remaining under the Agreement but for such termination.
 - vii. Purchaser agrees to provide such opinions of counsel as may be reasonably requested by Seller or a Financing Party in connection with the financing or sale of the System, at Seller’s expense.

20. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders (including any Financing Party), and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 20(a), except as set forth in Section 20(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20(a), but shall be in addition to all other remedies available at law or in equity.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.
- c. **Government Entity.** Seller is aware that Purchaser is a government entity and is subject to the California Public Records Act, *Cal.Govt.Code §6250 et seq.*, the Brown Act, *Cal.Govt.Code §54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **Governing Law, Dispute Resolution, and Waiver of Jury Trial.**

- a. **Governing Law and Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the State of California without giving effect to conflict of laws principles. Any and all disputes arising out of or in connection with this Agreement shall be resolved in accordance with Section 22(b) (Dispute Resolution) provided below.

b. Dispute Resolution.

- i. **Meet and Confer.** If a dispute arises between Seller and Purchaser in connection with this Agreement or the System, then, whoever is raising the issue must notify the other, in writing, and provide details regarding the basis for the dispute. Unless this Agreement specifically provides a separate set of procedures for handling that specific type of dispute (for example, disputes related to payment amounts or meter inaccuracy), Seller and Purchaser will meet within thirty (30) days after notice is provided to discuss the dispute and work in good faith to reach an amicable solution.
- ii. **Arbitration.** If Seller and Purchaser are unable to resolve the dispute within forty-five (45) days after the meet and confer described above, then, the Parties agree to arbitrate any dispute arising from or relating to this Agreement. The arbitration shall be in California, and shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures. If the Parties mutually agree, a mediator may be consulted prior to arbitration.
- iii. **Judicial Enforcement.** Either Seller or Purchaser may file a complaint seeking injunctive relief or seeking enforcement of the any arbitration award in any of the courts of the United States of America for the District of California located in Santa Clara County ("Federal Court"), or where jurisdiction of Federal Court is lacking, then in any California State Court located in Santa Clara County ("State Court"). Each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, and any appellate court, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum.
- iv. **Fees and Costs.** The costs and fees associated with a meet and confer or mediation shall be split equally between the parties. The prevailing party in any dispute resolved by arbitration or in any California Court shall be entitled to reasonable attorneys' fees and costs.

- c. Waiver of Jury Trial.** TO THE EXTENT ENFORCEABLE UNDER APPLICABLE LAW, EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY.

23. Miscellaneous Provisions

- a. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- b. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, [Section 14](#) (Representations and Warranties), [Section 7.h](#) (No Warranty), [Section 15.b](#) (Insurance Coverage), [Section 17](#) (Indemnification and Limits of Liability), [Section 20](#) (Confidentiality and Publicity), Section 22 (Governing Law, Dispute Resolution, and Waiver of Jury Trial), [Section 23.a](#) (Notices), [Section 23.e](#) (Comparative Negligence), [Section 23.f](#) (Non-Dedication of Facilities), [Section 23.h](#) (Service Contract), [Section 23.i](#) (No Partnership), [Section 23.j](#) (Full Agreement, Modification, Invalidity, Counterparts, Captions), and [Section 23.l](#) (No Third Party Beneficiaries).
- c. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

- d. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- e. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- f. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- g. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- h. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- j. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- k. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

- l. No Third Party Beneficiaries.** Except for assignees, Financing Parties, and Successor Providers permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- m. Bonding.** No bonding is required.
- n. Utility Rates.** Utility rates and utility rate structures are subject to changes. These changes cannot be accurately predicted. Projected savings from your distributed energy generation system are therefore subject to change. Tax incentives are subject to change or termination by executive, legislative or regulatory action.

Exhibit 4
Attachment A
Termination Payment

Contract Year	Termination Payment Amount
1	\$2,620,446.86
2	\$2,409,183.02
3	\$2,236,324.31
4	\$2,139,092.82
5	\$2,041,861.33
6	\$1,944,629.83
7	\$1,847,398.34
8	\$1,750,166.85
9	\$1,652,935.36
10	\$1,555,703.87
11	\$1,458,472.38
12	\$1,361,240.88
13	\$1,264,009.39
14	\$1,166,777.90
15	\$1,093,726.99
16	\$1,027,424.98
17	\$955,661.74
18	\$878,094.29
19	\$794,358.93
20	\$704,070.00
21	\$606,818.58
22	\$502,171.09
23	\$389,667.79
24	\$268,821.25
25	\$139,114.64
After Year 25	Fair Market Value

Exhibit 4
Attachment B
Est. Buyout Amount

Contract Year	Est. Buyout Amount
1	--
2	--
3	--
4	--
5	--
6	--
7	--
8	--
9	--
10	--
11	--
12	--
13	--
14	--
15	--
16	--
17	--
18	--
19	--
20	--
21	--
22	--
23	--
24	--
25	Fair Market Value
After Year 25	Fair Market Value

End of Exhibit 4

Exhibit 5
Form of Memorandum of License

NOTICE OF GRANT OF INTEREST IN REALTY

In accordance with the provisions of [____], notice is hereby given of that Solar Power Purchase Agreement dated as of [____] for purchase and sale of electrical energy (the “**Solar Agreement**”), such Solar Agreement includes the grant of License to Seller, pursuant to the terms of the Solar Agreement. This notice may be executed in counterparts by the Parties to the Solar Agreement.

Parties to the Solar Agreement:

Seller: [____]
[____]
[____]

Purchaser : [____]
[____]
[____]

Date of Execution of Solar Agreement: [____]

Description of Premises: See **Exhibit 5, Attachment A**

TERM OF SOLAR AGREEMENT:

The term of the Agreement shall be until the last day of the calendar month in which the twenty-fifth (25th) anniversary of the Commercial Operation Date (as that term is defined in the Solar Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Solar Agreement.

[signature pages follow]

Exhibit 5
Attachment A
Description of the Premises

[Seller to Complete]

IN WITNESS WHEREOF, this Agreement has been executed and delivered under seal on this _____ day of _____, 20__.

Seller:

By: _____

Print Name: _____

Title: _____

Purchaser:

By: _____

Print Name: Russell E. Bigler

Title: Chairman, Board of Governors

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit 6

Easement Agreement

This EASEMENT AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 20__ (the "Effective Date"), by and between KERN CO HOSP AUTHORITY, a local unit of government ("Grantor"), and SCP 35 LLC, a Delaware limited liability company ("Grantee").

Recitals

A. Grantor is the owner of those certain parcels or tracts of ground located in City of Bakersfield, County of Kern, State of California, and more particularly described on **Attachment A** attached hereto and incorporated herein (all of which parcels or tracts of ground are referred to herein as the "Property").

B. Grantor, or its affiliate, and Grantee entered into a certain unrecorded Solar Power Purchase Agreement (the "Solar Agreement") pursuant to which the Grantee has agreed to design, construct, install, operate and maintain a certain solar photovoltaic system (the "System") on the Property, as preliminarily depicted on Attachment B (the "Premises") for the purpose of providing electric energy to portions of the facilities or facility (the "Facility") located on the Property, and for purposes as otherwise set forth herein.

C. Grantor desires to grant to Grantee the rights described herein for the purposes of designing, installing, operating, maintaining and removing the System on and from the Property.

Agreement

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements set forth below, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged and confirmed by Grantor, Grantor and Grantee hereby agree as follows:

- Grant of Easement.** Grantor hereby grants and conveys unto Grantee, its successors and assigns, a non-exclusive easement for the period of time set forth herein, across, over, under and above the Premises in order to construct, install, access, alter, protect, repair, maintain, replace, own, operate, maintain and remove (a) the System, including any facilities or equipment appurtenant thereto as Grantee may from time to time require, and (b) electric lines and equipment, including inverters and meters, necessary to interconnect the System to Grantor's electric system at the Facility, to a utility's electric distribution system, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Grantor also hereby grants and conveys unto Grantee all other easements across, over, under and above the Property as reasonably necessary to provide access to and services reasonably required for Grantee's performance under the Solar Agreement. The easements granted hereunder shall run with and burden the Property for the term of this Agreement. During the Term, Grantor shall ensure that Grantee's rights under this Easement and Grantee's access to the Premises and the Facility are preserved and protected. Grantor shall not interfere with nor shall it permit any third parties to interfere with such rights or access.
- Term of Agreement.** This Agreement shall be for a period commencing on the Effective Date and expiring on the date that is the later of (a) the thirty-fifth (35th) anniversary of the Effective Date, and (b) one hundred twenty (120) days following expiration of the term of the Solar Agreement, and (c) earlier termination of the Solar Agreement due to default by Grantee thereunder. For avoidance of doubt, this Agreement shall remain in effect after any termination of the Solar Agreement due to default by Grantor thereunder until the thirty-fifth (35th) anniversary of the Effective Date. No delay or interruption by Grantee in the use or enjoyment of any right or easement hereby granted shall result in the loss, limitation or abandonment of any of the right, title, interest, easement or estate granted hereby. Grantee shall have the right to terminate this Agreement as to all or any portion of the Premises at any time in its sole discretion, effective upon written notice to Grantor.
- Obstructions.** Grantor understands that unobstructed sunlight ("Insolation") is essential to Grantee's performance of its obligations under the Solar Agreement. Therefore, in addition to the rights afforded Grantee under the Solar Agreement, Grantee may from time to time remove structures, trees, bushes, or other obstructions within such portions of the Premises and Facility, and may level and grade such portions of the Property, to the extent reasonably necessary to carry out the purposes set forth herein and under the Solar Agreement; provided that Grantor gives its prior written consent to such removal, leveling or grading, such consent not to be unreasonably withheld, delayed or conditioned. Alternatively, Grantor may elect to remove an obstruction at its sole cost and expense. Grantor covenants for itself, its heirs, successors and assigns that:

- a. Grantor will not build or place, or allow to be built or placed, any structure or obstruction of any kind within such portions of the Premises or Facility on which is located any portion of the System, including any related interconnection equipment; and
 - b. if such a structure or obstruction is built or placed within any portion of the Premises or Facility on which is located any portion of the System, including any related interconnection equipment, Grantor will remove the same at the request of the Grantee at no cost to the Grantee. Grantee may erect a fence on such portions of the Property or the Facility on which any portion of the System, are located in order to exclude Grantor and others from accessing such areas provided that Grantor gives its prior written consent, such consent not to be unreasonably withheld, delayed or conditioned.
4. **Reservation of Rights.** Grantor reserves the right to use or authorize others to use the Property and the Facility in any manner not inconsistent with or which will not unreasonably interfere with the rights granted herein, provided, however, that Grantor shall not, nor shall it permit others to, disturb the System, including any related interconnection equipment, in any way without prior written approval of the Grantee.
5. **Title.** Grantor represents and warrants to Grantee that Grantor holds fee simple title to the Premises, free and clear of all liens and any other encumbrances, except as expressly disclosed on Attachment A. No lien or other encumbrance to which the Premises is subject would reasonably be expected to adversely impact Grantee's rights hereunder or under the Solar Agreement. Upon request by Grantee, Grantor shall assist Grantee in a commercially reasonable manner to obtain easement crossing consent letters, subordination agreements, non-disturbance agreements, and other documents as so needed in relation to any liens and encumbrances encumbering the Property. Grantor further represents and warrants to Grantee that Grantor has the right to execute and deliver this Agreement and to grant to Grantee the easements and other rights hereunder, and that such grant does not, and will not, violate or breach Grantor's organizational documents, any law, rule or regulation, or any contract, agreement or arrangement to which Grantor is a party or by or to which any of Grantor's assets or properties, including the Premises or the Facility, is bound or subject. In the event that, after the date of this Agreement, Grantor duly grants a mortgage (the "**Subsequent Mortgage**"), Grantor shall, prior to and as a condition to the effectiveness of such grant of a mortgage, cause the mortgagee under the Subsequent Mortgage to execute and deliver to the Grantee an agreement, in customary form and in form and substance reasonably acceptable to Grantee, acknowledging the subordination of the Subsequent Mortgage to the grant of the easement pursuant to this Agreement (the "**Subordination Agreement**").
6. **Recordation; Possession.** This Agreement may be recorded against the Property by Grantee at Grantee's sole cost and expense. Grantor covenants and agrees, for itself and its assigns and successors, that the Grantee shall be entitled to exercise its rights under this Agreement upon execution and delivery of this Agreement by the Parties hereto, whether or not this Agreement is recorded.
7. **Governing Law.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the state where the System is located, without regard to conflicts of law principles.
8. **Severability.** All provisions of this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions.
9. **Binding Effect; Successors and Assigns.** Grantee shall have the right to assign, apportion, or otherwise transfer any or all of its rights, benefits, privileges, and interests arising in this Agreement in accordance with the terms of the Solar Agreement. Without limiting the generality of the foregoing, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and assigns. This Agreement may be amended, modified or terminated only by written instrument, executed and acknowledged by the Parties hereto.
10. **Headings.** The headings used herein are for convenience only and are not to be used in interpreting this Agreement.
11. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereto and supersedes any prior written or oral agreements with respect to the matters described herein.
12. **Amendments; Acknowledgments.** Grantor shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by any actual or prospective Grantee lender or investor, any assignee of rights under this Agreement, or the lender or investor of any assignee hereunder.
13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

[signature pages follow]

IN WITNESS WHEREOF, this Easement Agreement has been executed and delivered under seal on this _____ day of _____, 20__.

GRANTOR:

By: _____

Print Name: _____

Title: _____

GRANTEE:

By: _____

Print Name: _____

Title: _____

Attachment A
Description of the Property

Commented [DP1]: Update with Legal description given in Title Commitment issued by Title Insurance company

Attachment B

Depiction of the Premises

A 617.00 kWp (dc) solar photovoltaic generating system mounted to carport structures located at 1111 Columbus Street, Bakersfield, CA 93305, depicted as follows:

INSERT IMAGE OF SYSTEM

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Santa Clara)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Kern)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

**RECORDED AT THE REQUEST OF
AND MAIL TO:**

County of Kern
1115 Truxtun Ave., 3rd Floor
Bakersfield, CA 93301

Recorded Electronically by:
608 Ticor Title Company

DOC#: 000216086954



000216086954

Stat Types:	1	Pages:	5
FEEES		.00	
TAXES		.00	
OTHER		.00	
PAID		.00	

The undersigned Grantor(s) declare(s) that the DOCUMENTARY
TRANSFER TAX IS: \$ 0 County \$ City \$
 Computed on the consideration or value of property conveyed;
 Computed on the consideration or value less encumbrance
remaining at time of sale.
 Grantee is Exempt Gov't Agency (Gov't Code Sec. 27383)

Space above line for Recorder's Use

APN 126-041-23

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
COUNTY OF KERN, a political subdivision of the State of California ("**Grantor**"), hereby
REMISES, RELEASES, AND FOREVER GRANTS to the **KERN COUNTY HOSPITAL
AUTHORITY**, a county hospital authority ("**Grantee**"), that certain real property located in the City
of Bakersfield, County of Kern, State of California as legally described on the attached Exhibit "A"
("**Property**").

Grantee acknowledges that it is accepting the Property in an "AS IS" condition in reliance of its
own investigation and without representations and warranties except as otherwise specifically set forth
in that certain "Master Contract for the Transfer of Health Facilities" between Grantor and Grantee.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf by
its respective officers or agents hereunto as of JUNE 30, 2016.

COUNTY OF KERN, a political subdivision of
the State of California

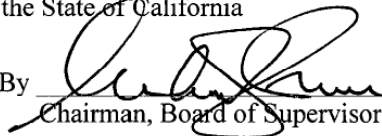
By 
Chairman, Board of Supervisors
Mick Gleason

EXHIBIT A

Sagebrush – 1111 Columbus Avenue

Bakersfield, Ca

LEGAL DESCRIPTION

The land referred to herein below is situated in the City of Bakersfield, County of Kern, State of California and is described as follows:

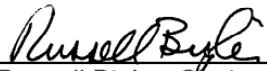
All of Lot 2 of Tract 1926, in the City of Bakersfield, County of Kern, State of California, as per map recorded June 6, 1957 in Book 9, Page 143 of Maps, in the Office of the County Recorder of said County.

Excepting therefrom all oil, gas, minerals and hydrocarbons, without right of entry, as reserved by the estate of Corinne Griffith in deed recorded April 5, 1979 in Book 5187, Page 2127 of official records.

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the grant deed for the property located 1111 Columbus Street, dated ~~June 30, 2016~~ from the County of Kern, a political subdivision of the State of California, to the Kern County Hospital Authority, is hereby accepted by the Chairman of the Board of Governors of said Authority and the grantee consents to recordation thereof by its duly authorized agent.

Dated: 6/29/16



Russell Bigler, Chairman
Board of Governors
Kern County Hospital Authority

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Kern)

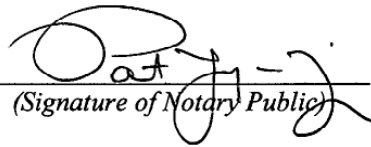
On June 29, 2016 before me, Pat Lively - Champlin,
(Date) (Here Insert Name and Title of the Officer)

personally appeared Russell Eugene Bigler
(Name(s) of Signer(s))

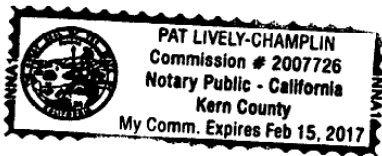
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
(Signature of Notary Public)

(Place Notary Seal Above)





**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed Sales Order 1-6LCV8QM with Cerner Corporation, an independent contractor, for the purchase of required IT Workstation on Wheels (WOW) devices in support of the Cerner Millennium Project.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board's approval of the proposed Sales Order 1-6LCV8QM from Cerner Corporation for the purchase of required IT WOW devices. The devices are unique as they will be both powered (in procedural areas) and non-powered (in patient rooms) and include mounted Dell computers and bar code scanners. The cost includes the build and delivery of noted equipment and the annual fees of a four (4) year maintenance program for the hardware and batteries for the powered WOWs

Cerner is the contracted vendor for the Cerner Millennium Project which entails the creation and installation of the Electronic Healthcare Record for Kern Medical. Board approval is required for this Sales Order since it exceeds the CEO's authority but is necessary for the implementation of the Cerner Millennium Project.

One Time Fees

Equipment	\$1,051,134
Warranties	\$47,964

Total cost of the four (4) year agreement is \$1,099,098. The devices and warranties are a part of the Cerner Millennium project and are an anticipated budget item.



CERNER SALES ORDER

Prepared For: Kern County Hospital Authority ("Client")
1700 Mount Vernon Ave
Bakersfield, CA 93306-4018 USA

Quote March 29, 2019
Expiration Date:

Cerner Sales Contact: Jon Rizzo

Phone #: (816) 201-7688

E-mail Address: jon.rizzo@cerner.com

This Cerner Sales Order is made on February 20, 2019 ("**Effective Date**"), between Client and Cerner Corporation ("**Cerner**"), a Delaware corporation with its principal place of business at 2800 Rockcreek Parkway, Kansas City, Missouri, 64117. This Cerner Sales Order is subject to, and incorporates by reference, the Cerner Business Agreement, dated July 01, 2016, between Client and Cerner (the "**Agreement**").

PAYMENT TERMS

EQUIPMENT AND SUBLICENSED SOFTWARE

One-Time Fees. The one-time Equipment/Sublicensed Software fees are payable upon shipment of the Equipment/Sublicensed Software.

Shipping. Client will pay standard shipping and handling fees, not to exceed \$26,304 USD. Additional fees may apply if Client requests expedited shipping. Notwithstanding any other agreement between the parties regarding shipping terms, the items set forth in this Cerner Sales Order shall be shipped FOB the manufacturer's plant.

EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE

Initial Fees. The total amount of the extended initial Maintenance fees will be paid upon shipment of the applicable Equipment/Sublicensed Software.

Ongoing Fees. The total amount of the extended ongoing Maintenance fees are payable annually, beginning upon shipment of the applicable Equipment/Sublicensed Software, or directly following the completion of the initial term.

TERM AND TERMINATION

Equipment and Sublicensed Software Maintenance. Maintenance warranties, if any, begin on the earlier of installation, or 30 days after shipment of the equipment and/or sublicensed software. Maintenance services will continue for an initial term of twelve (12) months, or such longer period as set forth in the "Solutions and Services" section of this Cerner Sales Order. Maintenance will automatically renew for additional periods of twelve (12) months, unless Client provides Cerner with written notification of its intent to terminate maintenance no less than sixty (60) days prior to the expiration of the then-current period. Cerner may terminate maintenance services if Client fails to pay invoices for maintenance. All unpaid charges for maintenance will be immediately due and payable upon such termination. Client will pay all applicable penalties or fees if maintenance services are terminated, then later reinstated.

ASSIGNMENT OF PAYMENTS

Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner Sales Order in whole or in part to an assignee. Client will promptly acknowledge each assignment or granting of a security interest. Cerner will continue to perform its obligations under the Agreement following such assignment or granting of a security interest.

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees	Annual Fees
Equipment	1,051,133.26	-	-
Equipment and Sublicensed Software Maintenance			
Year 1	-	-	47,963.97
Year 2	-	-	0.00

Cerner
Kern County Hospital Authority
1-6LCV8QM
January 22, 2019



CERNER SALES ORDER

Year 3	-	-	0.00
Year 4	-	-	0.00
Year 5	-	-	0.00
TOTALS:	1,051,133.26	-	47,963.97

All prices in this Cerner Sales Order are shown in US Dollar (USD).

SOLUTIONS AND SERVICES

EQUIPMENT

Line #	Solution Code	Description	Qty	Scope	Unit One-Time Fees	Extended One-Time Fees	Install Fees	Solution Description Code	Pass-Through Code
Quote: Jaco 120 NP (132) (1-14354122958-R-1)									
1	3000032641300	USB-C Monitor P2419HC	132	Each	171.00	22,572.00			
2	3000032639149	Dell Opti 7060MFF	132	Each	713.00	94,116.00			
3	120	JACO UltraLite 120 Non Powered PC & LCD Mobile Cart	132	Each	1,098.67	145,024.11			
4	51-3648	JACO Mount Honeywell 1900, Right Side Mount	132	Each	66.45	8,771.99			
6	51-3970	Right Wire Basket 4x8x12 Left Side - Wipes Container	132	Each	93.25	12,309.07			
7	P1065668-008	AC Power Adapter Kit with Power Cord	132	Each	61.95	8,177.40			
8	ZQ61-HUWA000-00	ZQ610 2" HC DUAL 802.11/BT4.X LINPLAT	132	Each	642.06	84,752.51			
9	DS8108-HCBU2104ZVW	DS8108-HC USB KIT: Scanner and Shielded USB Cable	132	Each	203.89	26,913.35			
10	STWM042	Scroll Wheel Mouse	132	Each	39.28	5,185.03			
11	SSWKS207	SEAL SHIELD : SILVER SEAL Medical Grade Keyboard	132	Each	55.01	7,261.25			
12	SS-INTEGRATION	Strategic Sourcing - Integration	1	Each					
13	32-0201-PC	JACO INC : Jaco Customization, Accent Color	132	Each	0.02	2.64			
14	51-4748	JACO INC: ASSY, Keyboard, XL, 120	132	Each	0.00	0.00			
5	51-4270	Zebra Qln220 Printer Mount left side mount	132	Each	53.59	7,074.14			

Line #	Solution Code	Description	Qty	Scope	Unit One-Time Fees	Extended One-Time Fees	Install Fees	Solution Description Code	Pass-Through Code
Quote: Jaco EVO 20 Hot Swappable (17) (1-14352370674-R-1)									
1	EVO-20-HS-L408	JACO INC : Jaco One EVO-20 Cart for LCDs	17	Each	4,051.69	68,878.69			
2	51-4218	JACO INC : Jaco POWERBLADE Charger Station	8	Each	896.09	7,168.73			
3	51-3829	JACO INC : Jaco POWERBLADE LiFe Hot Swap Battery	17	Each	729.00	12,393.08			
4	51-4283	JACO INC : Jaco Mount - Zebra QLn220	17	Each	32.16	546.75			
5	51-4673	Jaco Wire Basket, 4x8x12in for EVO Cart Seriest	17	Each	60.03	1,020.48			
6	51-3648	JACO Mount Honeywell 1900, Right Side Mount	17	Each	66.45	1,129.73			
7	51-3679	Jaco Wipes Container Holder - 5in Diameter	17	Each	34.30	583.16			
8	DS8108-HCBU2104ZVW	DS8108-HC USB KIT: Scanner and Shielded USB Cable	17	Each	214.08	3,639.44			
9	ZQ61-HUWA000-00	ZQ610 2" HC DUAL 802.11/BT4.X LINPLAT	17	Each	642.06	10,915.10			
10	P1065668-008	AC Power Adapter Kit with Power Cord	17	Each	61.95	1,053.15			
11	STWM042	Scroll Wheel Mouse	17	Each	39.28	667.77			
12	3000032639149	Dell Opti 7060MFF	17	Each	713.00	12,121.00			



Kern County Hospital Authority
1-6LCV8QM
January 22, 2019



CERNER SALES ORDER

Line #	Solution Code	Description	Qty	Scope	Unit One-Time Fees	Extended One-Time Fees	Install Fees	Solution Description Code	Pass-Through Code
Quote: Jaco EVO 20 Hot Swappable (17) (1-14352370674-R-1)									
13	3000032641300	USB-C Monitor P2419HC	17	Each	171.00	2,907.00			
14	SSWKS207	SEAL SHIELD : SILVER SEAL Medical Grade Keyboard	17	Each	55.01	935.16			
15	32-0201-PC	JACO INC : Jaco Customization, Accent Color	17	Each	0.02	0.34			
16	SS-INTEGRATION	Strategic Sourcing - Integration	1	Each					
18	51-4707	JACO INC: Jaco Extra Large Sliding Keyboard Tray	17	Each	0.00	0.00			

Line #	Solution Code	Description	Qty	Scope	Unit One-Time Fees	Extended One-Time Fees	Install Fees	Solution Description Code	Pass-Through Code
Quote: Jaco EVO 20 L500 (87) (1-14354122988-R-1)									
1	EVO-20-L500	JACO EVO LCD CART WITH LITHIUM IRON 500 POWER SYSTEM	87	Each	3,736.56	325,080.85			
2	51-3648	JACO Mount Honeywell 1900, Right Side Mount	87	Each	66.45	5,781.54			
3	51-4283	JACO INC : Jaco Mount - Zebra QLn220	87	Each	32.16	2,798.05			
4	51-4673	Jaco Wire Basket, 4x8x12in for EVO Cart Seriest	87	Each	60.03	5,222.48			
5	51-3679	Jaco Wipes Container Holder - 5in Diameter	87	Each	34.30	2,984.40			
6	SSWKS207	SEAL SHIELD : SILVER SEAL Medical Grade Keyboard	87	Each	48.54	4,223.11			
7	STM042	SILVER STORMTM Medical Grade Optical Mouse With Scroll	87	Each	34.79	3,026.43			
8	DS8108-HCBU2104ZVW	DS8108-HC USB KIT: Scanner and Shielded USB Cable	87	Each	203.89	17,738.34			
9	ZQ61-HUWA000-00	ZQ610 2" HC DUAL 802.11/BT4.X LINPLAT	87	Each	642.06	55,859.61			
10	P1065668-008	AC Power Adapter Kit with Power Cord	87	Each	61.95	5,389.65			
11	3000032639149	Dell Opti 7060MFF	87	Each	713.00	62,031.00			
12	3000032641300	USB-C Monitor P2419HC	87	Each	171.00	14,877.00			
13	32-0201-PC	JACO INC : Jaco Customization, Accent Color	87	Each	0.02	1.74			
14	51-4707	JACO INC: Jaco Extra Large Sliding Keyboard Tray	87	Each	0.00	0.00			

At the time of the actual order, Cerner may substitute individual equipment items listed above based on availability and technological advancements. Cerner and Client may also agree to replace certain equipment items with other Cerner offerings. If the substitution items result in an increase in fees, Cerner and Client will discuss the fee increase prior to ordering such items.

EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE

Line #	Manufacturer Part #	Description	Level of Service	Qty	Initial Maint Term (Mo)	Extended Initial Maintenance Fees	On-going Maint Term (Mo)	Extended Ongoing Maintenance Fees
Quote: Jaco 120 NP (132) (1-14354122958-R-1)								
9	DS8108-HCBU2104ZVW	DS8108-HC USB KIT: Scanner and Shielded USB Cable	9x5 M-F Depot	132	0	0.00	12	2,106.72
15	WTY-GOLD-NP	JACO INC: Jaco Gold Extended Part Warranty	9x5 M-F Depot	132	60	10,453.21	0	0.00

Line #	Manufacturer Part #	Description	Level of Service	Qty	Initial Maint Term (Mo)	Extended Initial Maintenance Fees	On-going Maint Term (Mo)	Extended Ongoing Maintenance Fees
Quote: Jaco EVO 20 Hot Swappable (17) (1-14352370674-R-1)								
8	DS8108-HCBU2104ZVW	DS8108-HC USB KIT: Scanner and Shielded USB Cable	9x5 M-F Depot	17	0	0.00	12	271.32



Kern County Hospital Authority
1-6LCV8QM
January 22, 2019



CERNER SALES ORDER

Line #	Manufacturer Part #	Description	Level of Service	Qty	Initial Maint Term (Mo)	Extended Initial Maintenance Fees	On-going Maint Term (Mo)	Extended Ongoing Maintenance Fees
Quote: Jaco EVO 20 Hot Swappable (17) (1-14352370674-R-1)								
17	WTY-GOLD-POW-HS	JACO INC: Jaco Gold Extended Part Warranty	9x5 M-F Depot	17	60	3,546.62	0	0.00
19	WTY-CHARGER-HS-2YR-EXT	JACO INC: Jaco Extended Warrant for Jaco Power Blade	9x5 M-F Depot	8	60	2,088.48	0	0.00
20	WTY-CELLS-L204-2YR-EXT	JACO INC: Jaco Extended Warranty for L204	9x5 M-F Depot	51	60	4,038.74	0	0.00

Line #	Manufacturer Part #	Description	Level of Service	Qty	Initial Maint Term (Mo)	Extended Initial Maintenance Fees	On-going Maint Term (Mo)	Extended Ongoing Maintenance Fees
Quote: Jaco EVO 20 L500 (87) (1-14354122988-R-1)								
8	DS8108-HCBU2104ZVW	DS8108-HC USB KIT: Scanner and Shielded USB Cable	9x5 M-F Depot	87	0	0.00	12	1,388.52
15	WTY-GOLD-POW-L500	JACO INC: Jaco Gold Extended Part Warranty	9x5 M-F Depot	87	60	24,070.36	0	0.00

At the time of the actual order, Cerner may substitute individual technology solutions based on availability and/or technological advancements. In the event of a substitution, the corresponding Maintenance services and fees are subject to change for the substituted items. If the substitution Maintenance services result in an increase in fees, Cerner and Client will discuss the fee increase prior to ordering such Maintenance services.

ADDITIONAL TERMS AND PROVISIONS

EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE TERMS

Maintenance Services for Equipment. Maintenance services for Equipment are: (a) initial determination of the source of the problem, problem management, critical situation escalation and recovery services; (b) dispatching and coordinating the activities of the third party maintenance supplier; (c) communicating with the third party maintenance supplier throughout the resolution of the issue; (d) field change orders; and (e) inclusion of Equipment issues in a tracking database. Maintenance services for Equipment do not include consumables.

Maintenance Services for Sublicensed Software. Maintenance services for Sublicensed Software are: (a) initial determination of the source of the problem, problem management, critical situation escalation and recovery services; (b) providing all new versions, modifications, and patches of Sublicensed Software that Cerner is authorized to distribute; (c) communicating with third party maintenance providers throughout the resolution of the issue, (d) inclusion of Sublicensed Software issues in a tracking database.

Maintenance Renewals. The initial term for maintenance is set forth in the "Solutions and Services" section of this Cerner Sales Order, and automatically renews for additional periods of twelve (12) months, unless Client provides written notification of termination no less than 60 days prior to the expiration of the then-current period. Client will also notify Cerner of any Equipment items that are no longer being used by Client, and therefore no longer require maintenance. Cerner may terminate maintenance services if Client fails to pay invoices for maintenance.

Equipment Coverage Levels.

24x7 M-Su 4 HR. Monday through Sunday, 24 hours per day, 365 days per year, on-site coverage. Service effort is continuous until problem is resolved. 24x7 4 HR service does not guarantee that service will be completed same day due to part availability.

9x5 M-F 4 HR. Monday through Friday, 8 AM to 5 PM CST, on-site coverage. Service effort is continuous until problem is resolved, excluding country holidays. On-site coverage does not guarantee that service will be completed same day due to part availability.

9x5 M-F Next Business Day. Monday through Friday, 8 AM to 5 PM CST with the objective of completion the next business



Kern County Hospital Authority
1-6LCV8QM
January 22, 2019

EQUIPMENT AND SUBLICENSSED SOFTWARE MAINTENANCE TERMS

day.

9x5 M-F Depot. Monday through Friday, 8 AM to 5 PM CST for service calls. Equipment is shipped to the manufacturer where it is repaired and returned to Client's facility.

9x5 M-F Advanced Exchange. Monday through Friday, 8 AM to 5 PM CST for service calls. A replacement will be shipped the next business day and requires return of the replaced equipment within 15 days of receiving the replaced device. Service requests placed after 1 PM CST cannot be guaranteed next business day delivery. If more than one device is being requested for replacement, one will be Advance Exchange and the remaining will be returned on a best effort basis depending upon availability of replacements.

Sublicensed Software Coverage Levels. Service effort is continuous until the problem is resolved.

24x7 M-Su Phone Support. Monday through Sunday, 24 hours per day, 365 days per year.

Changes to Maintenance Services. Changes to maintenance services must be requested in writing by Client, and will take effect within 60 days after receipt of a signed change order.

Technology components can be added to maintenance coverage if they are in good working order. If a component is not in good working order, Cerner can arrange for it to be repaired on a time and materials basis prior to being placed on maintenance. Serial numbers must be provided.

Inventory. Client will review all Maintenance renewal letters to ensure accuracy, and to avoid charges for uncovered items. Client will provide Cerner with any missing or incorrect serial numbers as soon as possible to keep records current. Client will notify Cerner when technology components are replaced.

Upgrades. Maintenance services do not include hardware/technology updates. Maintenance services include software updates once they become available and have been certified for use by Cerner.

Pricing and Allowances. Equipment and/or Sublicensed Software maintenance pricing and allowances granted by Cerner are confidential and are not to be discussed outside the context of this arrangement. Allowances are available for multi-year maintenance and prepaid terms of one year or greater. Prices do not include any applicable taxes.

Multi-Year Commitments. Fees associated with the initial term are deemed prepaid and are non-refundable.

EQUIPMENT/SUBLICENSSED SOFTWARE DELIVERY

Delivery Information. The following delivery information is required to process the equipment/sublicensed software in this Cerner Sales Order.

Delivery Address	Delivery Contact Information
_____ <i>(Name of Facility)</i>	_____ <i>(Name – Printed)</i>
_____ <i>(Address Line 1)</i>	_____ <i>(E-mail Address)</i>
_____ <i>(Address Line 2)</i>	_____ <i>(Phone Number)</i>
_____ <i>(City, State/Province, Zip/Postal Code, Country)</i>	_____ <i>(Fax Number)</i>

Delivery Requirements. Please check the applicable box for each question below to help ensure a successful delivery.

Does the facility accommodate a 48 foot trailer?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Does the facility have a loading dock?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
What are the receiving days and hours of operation? <i>(Please enter days and times available)</i>	Days: _____	Time (From): _____	Time (To): _____
Will a lift gate and/or ramp be required?	No <input type="checkbox"/>	Lift Gate <input type="checkbox"/>	Ramp <input type="checkbox"/>
To what floor will the equipment be delivered?	Basement <input type="checkbox"/>	Ground <input type="checkbox"/>	Floor: _____
Does the facility have an elevator, or will a stair crawler be required?	Elevator <input type="checkbox"/>	Stair Crawler <input type="checkbox"/>	N/A <input type="checkbox"/>
Does the facility require floor covering?		Yes <input type="checkbox"/>	No <input type="checkbox"/>



CERNER SALES ORDER

AUTHORIZATION

By executing this Cerner Sales Order, Client agrees to purchase and take delivery of the products, services, Maintenance, and installation set forth herein. Please fax this Cerner Sales Order in its entirety, along with Purchase Order* (if applicable), to the Cerner Contract Management Office at 816-571-6947, and return all originals to the following address:

Cerner Corporation
Attn: Contract Management Office
2800 Rockcreek Parkway
Kansas City, MO 64117
USA

KERN COUNTY HOSPITAL AUTHORITY

By: _____
(signature)

_____ Russell E. Bigler
(type or print)

Title: _____ Chairman, Board of Governors

Purchase Order #: _____
(if applicable)

*If Client chooses to submit a third-party Purchase Order, the third-party must submit payment in full along with this executed Cerner Sales Order in order for the scheduling of resources to commence.

Client shall complete the following upon execution of this Cerner Sales Order:

Client Invoice Contact: _____

Contact Phone #: _____

Contact E-mail Address: _____

Client's account can be managed online at cerner.com by registering for Cerner eBill. To gain access to eBill, contact the Cerner Client Care Contact Center at 866-221-8877 or e-mail ClientCareCenter@cerner.com.

CERNER CORPORATION

By: _____
(Handwritten signature)

_____ Teresa Waller

Title: _____ Sr. Director, Contract Management

APPROVED AS TO FORM
Legal Services Department

By: _____
(Handwritten signature)
Kern County Hospital Authority



Kern County Hospital Authority
1-6LCV8QM
January 22, 2019



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed Sales Order 1-6LC01PM with Cerner Corporation, an independent contractor, for the purchase of required IT peripheral devices in support of the Cerner Millennium Project.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board's approval of the proposed Sales Order 1-6LC01PM from Cerner Corporation for the purchase of required IT peripheral devices which include but are not limited to; barcode and document scanners, label and wristband printers, and tablets.

Cerner is the contracted vendor for the Cerner Millennium Project which entails the creation and installation of the Electronic Healthcare Record for Kern Medical. Board approval is required for this Sales Order since it exceeds the CEO's authority but is necessary for the implementation of the Cerner Millennium Project.

One Time Fees

Equipment	\$255,969.09
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Annual Fees

Year 1	\$ 16,230.93
Year 2	\$ 5,041.35
Year 3	\$ 5,041.35
Year 4	\$ 5,041.35
Total Annual	\$ 31,354.98

Total cost of the four (4) year agreement is \$287,324. The devices and warranties are a part of the Cerner Millennium project and are an anticipated budget item.



CERNER SALES ORDER

Prepared For: Kern County Hospital Authority ("Client")
1700 Mount Vernon Ave
Bakersfield, CA 93306-4018 USA

Quote March 29, 2019
Expiration Date:

Cerner Sales Contact: Jon Rizzo

Phone #: (816) 201-7688

E-mail Address: jon.rizzo@cerner.com

This Cerner Sales Order is made on February 20, 2019 ("**Effective Date**"), between Client and Cerner Corporation ("**Cerner**"), a Delaware corporation with its principal place of business at 2800 Rockcreek Parkway, Kansas City, Missouri, 64117. This Cerner Sales Order is subject to, and incorporates by reference, the Cerner Business Agreement, dated July 01, 2016, between Client and Cerner (the "**Agreement**").

PAYMENT TERMS

EQUIPMENT AND SUBLICENSED SOFTWARE

One-Time Fees. The one-time Equipment/Sublicensed Software fees are payable upon shipment of the Equipment/Sublicensed Software.

Shipping. Client will pay standard shipping and handling fees, not to exceed \$6,456 USD. Additional fees may apply if Client requests expedited shipping. Notwithstanding any other agreement between the parties regarding shipping terms, the items set forth in this Cerner Sales Order shall be shipped FOB the manufacturer's plant.

EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE

Initial Fees. The total amount of the extended initial Maintenance fees will be paid upon shipment of the applicable Equipment/Sublicensed Software.

Ongoing Fees. The total amount of the extended ongoing Maintenance fees are payable annually, beginning upon shipment of the applicable Equipment/Sublicensed Software, or directly following the completion of the initial term.

TERM AND TERMINATION

Equipment and Sublicensed Software Maintenance. Maintenance warranties, if any, begin on the earlier of installation, or 30 days after shipment of the equipment and/or sublicensed software. Maintenance services will continue for an initial term of twelve (12) months, or such longer period as set forth in the "Solutions and Services" section of this Cerner Sales Order. Maintenance will automatically renew for additional periods of twelve (12) months, unless Client provides Cerner with written notification of its intent to terminate maintenance no less than sixty (60) days prior to the expiration of the then-current period. Cerner may terminate maintenance services if Client fails to pay invoices for maintenance. All unpaid charges for maintenance will be immediately due and payable upon such termination. Client will pay all applicable penalties or fees if maintenance services are terminated, then later reinstated.

ASSIGNMENT OF PAYMENTS

Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner Sales Order in whole or in part to an assignee. Client will promptly acknowledge each assignment or granting of a security interest. Cerner will continue to perform its obligations under the Agreement following such assignment or granting of a security interest.

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees	Annual Fees
Equipment	255,969.09	-	-
Equipment and Sublicensed Software Maintenance			



Kern County Hospital Authority
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CERNER SALES ORDER

Year 1	-	-	16,230.93
Year 2	-	-	5,041.35
Year 3	-	-	5,041.35
Year 4	-	-	5,041.35
TOTALS:	255,969.09	-	31,354.98

All prices in this Cerner Sales Order are shown in US Dollar (USD).

SOLUTIONS AND SERVICES

EQUIPMENT

Line #	Solution Code	Description	Qty	Scope	Unit One-Time Fees	Extended One-Time Fees	Install Fees	Solution Description Code	Pass-Through Code
Quote: Technology- Go Live Equipment (1-14352318361-R-1)									
1	TAN-M12-4GB	Tangent Medix M12 Tablet	4	Each	1,781.85	7,127.40			
2	TAN-M7-4GB	FOR MSJH_NC ONLY: 7.1in Tablet, PCAP Multi-Touch,	5	Each	1,468.95	7,344.75			
3	DS8178-HCBU210MS5W	DS8178-HC FIPS Desk/Wall Cradle USB KIT: DS8178-HCMF00BVMWW	60	Each	467.95	28,077.21			
4	DS8108-HCBU2104ZVW	DS8108-HC USB KIT: Scanner and Shielded USB Cable	46	Each	203.89	9,378.89			
5	20-71043-0BR	Gooseneck Intellistand - DS8108 DS4308 (HC White)	30	Each	24.94	748.12			
6	ZD51013-D01E00FZ	ZD510-HE Wristband Printer Ethernet	7	Each	346.75	2,427.26			
7	ZQ61-HUWA000-00	ZQ610 2" HC DUAL 802.11/BT4.X LINPLAT	34	Each	642.06	21,830.19			
8	P1065668-008	AC Power Adapter Kit with Power Cord	34	Each	61.95	2,106.30			
9	AT17010-1	USB Cable for Zebra QL series printers, 3.5ft	24	Each	11.02	264.60			
10	BTRY-MPP-34MAHC1-01	KIT ACC ZQ610/620 HEALTHCARE SPARE SMART BATTERY	42	Each	70.88	2,976.75			
11	SAC-MPP-3BCHGUS1-01	3 slot battery charger; ZQ600, QLn and ZQ500 Series	11	Each	167.48	1,842.22			
12	ZD41H22-D01E00EZ	DT Printer ZD410 Healthcare, 2", 203 dpi, US cord, USB, USB	47	Each	294.38	13,835.77			
13	ZD42H42-D01E00EZ	DT Printer, ZD420, Healthcare 203 dpi with Ethernet	3	Each	385.58	1,156.74			
14	ZT41042-T010000Z	ZT410 Thermal Printer,203dpi,DT/TT,ZPL,USB,Eth	6	Each	830.66	4,983.93			
15	ZD62L42-D21F00EZ	DT ZD620 LOCKING; STD EZPL 203DPI USB	40	Each	560.28	22,411.20			
16	ZD42H42-C01E00EZ	ZD420 Label Printer - Healthcare Model	1	Each	431.18	431.18			
17	EHRSIG2376	Wacom DTU-1031X Pen Display, 10.1" color LCD w/ 1024x600 res	46	Each	342.36	15,748.56			
18	PA03670-B085	Fujitsu fi-7160 Document Scanner	76	Each	837.28	63,633.34			
20	STK503RED	SILVER STORM Medical Grade Keyboard RED	28	Each	44.96	1,258.91			
21	STWVM042	Scroll Wheel Mouse	28	Each	39.28	1,099.85			
22	52108	C2G : C2G 3m USB 2.0 A Male to A Female Extension Cable - BI	28	Each	3.13	87.61			
23	OMNISMART350HG	Tripp Lite 350VA 225W UPS Hospital Medical Tower	28	Each	357.99	10,023.64			
24	OPOWM3N9-D01	PowerMic III NON Scanner, 9 Foot Cord	5	Each	275.00	1,375.00			
25	9705B007	Canon imageFORMULA P-215-II	3	Each	221.55	664.64			
27	ST650	Peerless SmartMount Tilt Wall Mount - 39 in - 75 in	10	Each	67.53	675.26			
28	C431	LCD Display - 43 Inch - 1920 x 1080	3	Each	710.84	2,132.52			
29	E557Q	NEC DISPLAY SOLUTIONS : 55 4K UHD Display	5	Each	992.25	4,961.25			
30	C751Q	NEC DISPLAY SOLUTIONS : 75	2	Each	2,804.99	5,609.98			



CERNER SALES ORDER

Line #	Solution Code	Description	Qty	Scope	Unit One-Time Fees	Extended One-Time Fees	Install Fees	Solution Description Code	Pass-Through Code
Quote: Technology- Go Live Equipment (1-14352318361-R-1)									
		LED LCD, UHD, 350nits							
31	TAN-M24T-SURGINET	24in Medix M24T, PCAP MultiTouch, Intel Core i-5 CPU	8	Each	1,779.75	14,238.00			
32	TAN-FALCONIT-SURGINET	Falcon IT Mount with worksurface configured for Anesthesia m	8	Each	939.75	7,518.00			

At the time of the actual order, Cerner may substitute individual equipment items listed above based on availability and technological advancements. Cerner and Client may also agree to replace certain equipment items with other Cerner offerings. If the substitution items result in an increase in fees, Cerner and Client will discuss the fee increase prior to ordering such items.

EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE

Line #	Manufacturer Part #	Description	Level of Service	Qty	Initial Maint Term (Mo)	Extended Initial Maintenance Fees	On-going Maint Term (Mo)	Extended Ongoing Maintenance Fees
Quote: Technology- Go Live Equipment (1-14352318361-R-1)								
3	DS8178-HCBU210MS5W	DS8178-HC FIPS Desk/Wall Cradle USB KIT: DS8178-HCMF00BVMWW	9X5 M-F Phone Support	60	36	5,788.80	0	0.00
4	DS8108-HCBU2104ZVW	DS8108-HC USB KIT: Scanner and Shielded USB Cable	9x5 M-F Depot	46	0	0.00	12	734.16
13	ZD42H42-D01E00EZ	DT Printer, ZD420, Healthcare 203 dpi with Ethernet	9x5 M-F Depot	3	36	299.16	0	0.00
14	ZT41042-T010000Z	ZT410 Thermal Printer,203dpi,DT/TT,ZPL,USB,Eth	9x5 M-F Depot	6	36	2,640.00	0	0.00
18	S7160-AEPWNBD-1	fi-7160 1 Year Advance Exchange	9x5 M-F Advanced Exchange	76	12	6,384.22	0	0.00
18	PA03670-B085	Fujitsu fi-7160 Document Scanner	9x5 M-F Advanced Exchange	76	12	0.00	36	15,124.05
24	0POWM3N9-D01	PowerMic III NON Scanner, 9 Foot Cord	9x5 M-F Depot	5	0	0.00	12	294.60
25	5351B011	Canon P-215II Advanced Exchange	9x5 M-F Advanced Exchange	3	12	90.00	0	0.00

At the time of the actual order, Cerner may substitute individual technology solutions based on availability and/or technological advancements. In the event of a substitution, the corresponding Maintenance services and fees are subject to change for the substituted items. If the substitution Maintenance services result in an increase in fees, Cerner and Client will discuss the fee increase prior to ordering such Maintenance services.

ADDITIONAL TERMS AND PROVISIONS

EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE TERMS

Maintenance Services for Equipment. Maintenance services for Equipment are: (a) initial determination of the source of the problem, problem management, critical situation escalation and recovery services; (b) dispatching and coordinating the activities of the third party maintenance supplier; (c) communicating with the third party maintenance supplier throughout the resolution of the issue; (d) field change orders; and (e) inclusion of Equipment issues in a tracking database. Maintenance services for Equipment do not include consumables.

Maintenance Services for Sublicensed Software. Maintenance services for Sublicensed Software are: (a) initial determination of the source of the problem, problem management, critical situation escalation and recovery services; (b) providing all new versions, modifications, and patches of Sublicensed Software that Cerner is authorized to distribute; (c) communicating with third party maintenance providers throughout the resolution of the issue, (d) inclusion of Sublicensed Software issues in a tracking database.

Maintenance Renewals. The initial term for maintenance is set forth in the "Solutions and Services" section of this Cerner Sales Order, and automatically renews for additional periods of twelve (12) months, unless Client provides written notification of termination no less than 60 days prior to the expiration of the then-current period. Client will also notify Cerner of any Equipment items that are no longer being used by Client, and therefore no longer require maintenance. Cerner may terminate maintenance services if Client fails to pay invoices for maintenance.



Kern County Hospital Authority
1-6LC0IPM
January 17, 2019

EQUIPMENT AND SUBLICENSSED SOFTWARE MAINTENANCE TERMS

Equipment Coverage Levels.

24x7 M-Su 4 HR. Monday through Sunday, 24 hours per day, 365 days per year, on-site coverage. Service effort is continuous until problem is resolved. 24x7 4 HR service does not guarantee that service will be completed same day due to part availability.

9x5 M-F 4 HR. Monday through Friday, 8 AM to 5 PM CST, on-site coverage. Service effort is continuous until problem is resolved, excluding country holidays. On-site coverage does not guarantee that service will be completed same day due to part availability.

9x5 M-F Next Business Day. Monday through Friday, 8 AM to 5 PM CST with the objective of completion the next business day.

9x5 M-F Depot. Monday through Friday, 8 AM to 5 PM CST for service calls. Equipment is shipped to the manufacturer where it is repaired and returned to Client's facility.

9x5 M-F Advanced Exchange. Monday through Friday, 8 AM to 5 PM CST for service calls. A replacement will be shipped the next business day and requires return of the replaced equipment within 15 days of receiving the replaced device. Service requests placed after 1 PM CST cannot be guaranteed next business day delivery. If more than one device is being requested for replacement, one will be Advance Exchange and the remaining will be returned on a best effort basis depending upon availability of replacements.

Sublicensed Software Coverage Levels. Service effort is continuous until the problem is resolved.

24x7 M-Su Phone Support. Monday through Sunday, 24 hours per day, 365 days per year.

Changes to Maintenance Services. Changes to maintenance services must be requested in writing by Client, and will take effect within 60 days after receipt of a signed change order.

Technology components can be added to maintenance coverage if they are in good working order. If a component is not in good working order, Cerner can arrange for it to be repaired on a time and materials basis prior to being placed on maintenance. Serial numbers must be provided.

Inventory. Client will review all Maintenance renewal letters to ensure accuracy, and to avoid charges for uncovered items. Client will provide Cerner with any missing or incorrect serial numbers as soon as possible to keep records current. Client will notify Cerner when technology components are replaced.

Upgrades. Maintenance services do not include hardware/technology updates. Maintenance services include software updates once they become available and have been certified for use by Cerner.

Pricing and Allowances. Equipment and/or Sublicensed Software maintenance pricing and allowances granted by Cerner are confidential and are not to be discussed outside the context of this arrangement. Allowances are available for multi-year maintenance and prepaid terms of one year or greater. Prices do not include any applicable taxes.

Multi-Year Commitments. Fees associated with the initial term are deemed prepaid and are non-refundable.

EQUIPMENT/SUBLICENSSED SOFTWARE DELIVERY

Delivery Information. The following delivery information is required to process the equipment/sublicensed software in this Cerner Sales Order.

Delivery Address	Delivery Contact Information
<i>(Name of Facility)</i>	<i>(Name – Printed)</i>
<i>(Address Line 1)</i>	<i>(E-mail Address)</i>
<i>(Address Line 2)</i>	<i>(Phone Number)</i>
<i>(City, State/Province, Zip/Postal Code, Country)</i>	<i>(Fax Number)</i>

Delivery Requirements. Please check the applicable box for each question below to help ensure a successful delivery.

Does the facility accommodate a 48 foot trailer?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Does the facility have a loading dock?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
What are the receiving days and hours of operation? <i>(Please enter days and times available)</i>	Days: _____	Time (From): _____	Time (To): _____
Will a lift gate and/or ramp be required?	No <input type="checkbox"/>	Lift Gate <input type="checkbox"/>	Ramp <input type="checkbox"/>
To what floor will the equipment be delivered?	Basement <input type="checkbox"/>	Ground <input type="checkbox"/>	Floor: _____
Does the facility have an elevator, or will a stair crawler be required?	Elevator <input type="checkbox"/>	Stair Crawler <input type="checkbox"/>	N/A <input type="checkbox"/>
Does the facility require floor covering?		Yes <input type="checkbox"/>	No <input type="checkbox"/>

AUTHORIZATION

By executing this Cerner Sales Order, Client agrees to purchase and take delivery of the products, services, Maintenance, and installation set forth herein. Please fax this Cerner Sales Order in its entirety, along with Purchase Order* (if applicable), to the Cerner Contract Management Office at 816-571-6947, and return all originals to the following address:

Cerner Corporation
Attn: Contract Management Office
2800 Rockcreek Parkway
Kansas City, MO 64117
USA

KERN COUNTY HOSPITAL AUTHORITY

By: _____
(signature)

Russell E. Bigler
(type or print)

Title: Chairman, Board of Governors

Purchase Order #: _____
(if applicable)

*If Client chooses to submit a third-party Purchase Order, the third-party must submit payment in full along with this executed Cerner Sales Order in order for the scheduling of resources to commence.

Client shall complete the following upon execution of this Cerner Sales Order:

Client Invoice Contact: _____

Contact Phone #: _____

Contact E-mail Address: _____

Client's account can be managed online at cerner.com by registering for Cerner eBill. To gain access to eBill, contact the Cerner Client Care Contact Center at 866-221-8877 or e-mail ClientCareCenter@cerner.com.

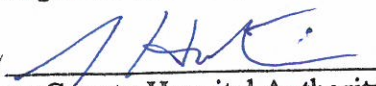
CERNER CORPORATION

By: _____


Teresa Waller

Title: Sr. Director, Contract Management

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed Schedule No. 11 to Agreement HA2016-036 with Cerner Corporation, an independent contractor, for purchase of additional modules for the Cerner Millennium Project

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board's approval of the proposed Schedule 11 with Cerner Corporation for the purchase of Nuance-Dragon Medical One Cloud Edition, which is voice to text technology necessary for a successful Electronic Health Record (HER).

Cerner is the contracted vendor for the Cerner Millennium Project which entails the creation and installation of the EHR for Kern Medical. Board approval is required for this Schedule 11 since it exceeds the CEO's authority but is necessary for the implementation of the Cerner Millennium Project and is within the scope of the project.

Board approval is recommended to approve the one (1) time fee of \$87,690 for the module and the monthly fee of \$12,221, for hosting post implementation, for five (5) years.

The existing network edition of Dragon (DMNE) will cost \$614,545 over the next five (5) years. In addition, there are license limitations of 250 users and no mobile capabilities. Kern Medical must also maintain and upgrade our local server environment with an estimated cost of \$85,000. The strategy behind Schedule 11 is to migrate from the current, more costly with the required additions, on premise technology to a cloud base model.

The Dragon Medical One (DMO) will cost \$733,260 over the next five (5) years and includes the DMO mobile platform for iOS and Android smartphones used by physicians and case managers, a site license with unlimited users, cloud remote hosting, one (1) year of adoption coaching and support, and the Dragon Medical Advisor (DMA).

Total cost of the five (5) year agreement is \$820,950. The module and support are a part of the Cerner Millennium project and are an anticipated budget item.



CERNER SYSTEM SCHEDULE NO. 11

This Cerner System Schedule is made on February 20, 2019 ("Effective Date"), between

Kern County Hospital Authority ("Client")

and

Cerner Corporation ("Cerner")

a local unit of government with its principal place of business at:

a Delaware corporation with its principal place of business at:

1700 Mount Vernon Ave
Bakersfield, CA 93306-4018, USA
Telephone: (661) 326-2000

2800 Rockcreek Parkway
Kansas City, MO 64117, U.S.A.
Telephone: (816) 221-1024

This Cerner System Schedule includes the sections noted below. Client agrees to purchase the products and services set forth herein, and Cerner agrees to furnish such products and services, upon the terms and conditions of this Cerner System Schedule and the Cerner Business Agreement, dated July 01, 2016, between Client and Cerner (the "Agreement").

- Facilities
- Scope of Use
- Payment Terms
- Term and Termination
- Pass-Through Provisions
- Assignment of Payments
- Financial Overview
- Solutions and Services
- Scope of Services
- Event Activity Report
- Execution Invoice

KERN COUNTY HOSPITAL AUTHORITY

By: _____
(signature)

Russell E. Bigler
(type or print)

Title: _____
Chairman, Board of Governors

Purchase Order #: _____
(if applicable)

Project Kick-off requested the week of: _____

CERNER CORPORATION

By: _____
(signature)

Teresa Waller

Title: _____
Senior Director, Contract Management

Client will complete the following upon execution of this Cerner System Schedule:

Client Invoice Contact: _____

Contact Phone #: _____

Contact E-mail Address: _____

Client's account can be managed online at cerner.com by registering for Cerner eBill. To gain access to eBill, contact the Cerner Client Care Contact Center at 866-221-8877 or e-mail ClientCareCenter@cerner.com.

APPROVED AS TO FORM
Legal Services Department

By: _____
Kern County Hospital Authority



Kern County Hospital Authority
1-6DJE6AU
January 09, 2019

PERMITTED FACILITIES

For use and access by these facilities:

Name	Address	City	State/Province	Zip/Postal Code	Country
Kern County Hospital Authority	1700 Mount Vernon Ave	Bakersfield	CA	93306-4018	USA

The parties may add or substitute Permitted Facilities by amending this section, provided Client pays any relevant scope of use expansion fees in the section below.

SCOPE OF USE

Scope of Use Limits. Client will use the following solutions in accordance with the Solution Descriptions and subject to the scope of use limits set forth below.

Solution Description	Scope of Use Metric	Scope of Use Limit	Scope of Use Metric Description
DM One, Upgrade frm DMNE, Trm, Outpatient Visit Lic, PowerMic Mobile Outpatient License, DMA wCore&HCC Specificity Content,Hosted,Trm,IP Adms	Outpatient Visits	213,286	Total number of annual outpatient visits. An outpatient visit is defined as a visit by a patient who either receives ambulatory services or is lodged in the hospital less than 24 hours while receiving medical, dental, or other services.
DM One, Upgrade from DMNE, Term, ED Visists, Lic, PowerMic Mobile Emergency Medicine License, DMA wCore&HCC SpecificityContent,Hosted,Trm,EDVisits	ED Visits	59,582	Total number of annual emergency room visits. An emergency room visit is defined as a visit to the emergency unit.
DM One, Upgrade from DMNE, Term, IP Admissions, Lic, PowerMic Mobile Inpatient License	Admissions	13,514	Total number of annual facility admissions.
DMA w Core&HCC Specificity Content,Svc,Trm,IP Adms	Inpatient Admissions	13,514	Total number of annual facility admissions. Admissions are defined as being lodged in the hospital for 24 hours or greater.

Scope of Use Expansion. If a scope of use limit is exceeded, Client agrees to pay the additional fees below, which are valid for two (2) years after the Effective Date, and thereafter increase at a rate of five percent (5%) per year.

Solution Description	Scope of Use Metric	Extending Scope of Use Limit by	Additional Licensing Fees	Additional Monthly Support Fees	Additional Monthly Fees
DM One, Upgrade frm DMNE, Trm, Outpatient Visit Lic	Outpatient Visits	21,329	-	-	817
DM One, Upgrade from DMNE, Term, ED Visists, Lic	ED Visits	5,959	-	-	422
DM One, Upgrade from DMNE, Term, IP Admissions, Lic	Admissions	1,352	-	-	501
DMA w Core&HCC Specificity Content,Svc,Trm,IP Adms	Inpatient Admissions	1,352	-	-	237
DMA wCore&HCC Specificity Content,Hosted,Trm,IP Adms	Outpatient Visits	21,329	-	-	373
DMA wCore&HCC SpecificityContent,Hosted,Trm,EDVisits	ED Visits	5,959	-	-	194
PowerMic Mobile Emergency Medicine License	ED Visits	5,959	-	-	119
PowerMic Mobile Inpatient License	Admissions	1,352	-	-	135
PowerMic Mobile Outpatient License	Outpatient Visits	21,329	-	-	427

Scope of use will be measured periodically by Cerner's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g. FTEs or locations), Client will provide the relevant information

(including records to verify the information) to Cerner at least one (1) time(s) per year. Client agrees that if an event occurs that will affect Client's scope of use (such as acquisition of a new hospital or other new facility), Client will promptly notify Cerner in writing of such event no later than thirty (30) days following the effective date of such event so that Client's scope of use can be reviewed. Any additional fees due under this Section will be payable within sixty (60) days following Client's receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded, and paid annually (pro-rated for any partial month).

PAYMENT TERMS

SUBSCRIPTIONS

Monthly Fees. The monthly subscription fees are payable annually beginning on the Effective Date.

MANAGED SERVICES

One-Time Fees. The one-time managed services fees will be paid on the Effective Date.

Monthly Fees. The monthly managed services fees are payable quarterly beginning on the Effective Date.

PROFESSIONAL SERVICES

Fixed Fee. Fifty percent (50%) of the total professional services fees will be paid on the Effective Date. The remaining 50% is payable 90 days following the Effective Date.

Fee for Service. Professional services provided on a "time and materials" basis will be billed monthly at the rates set forth in the "Solutions and Services" section.

FEE INCREASES

Cerner may increase the monthly fee for Support services and each recurring service (such as managed services, application services, subscription services, application management services, employer services, transaction services, and Shared Computing Services) any time following the initial twelve (12) month period after such recurring service fees begin (but not more frequently than once in any twelve (12) month period) by giving Client sixty (60) days prior written notice of the price increase. The amount of any increase in the fees shall not exceed the previous calendar year's percentage increase in CPI, plus 1% per annum. Cerner may also increase the fees at any time during the term if a Cerner third party increases the fees to be paid by Cerner, with such increase being limited to the amount of increase in Cerner's fee to the third party.

TERM AND TERMINATION

Other Services. All recurring services (such as managed services, application services, subscription services, application management services, employer services, transaction services, and Shared Computing Services) begin on the Effective Date, and continue for the term set forth in the "Solutions and Services" section. At the end of the applicable term, each service may renew for additional 12 month periods at the rate charged in the final period of the then-current term by written agreement of the parties no less than 90 days prior to the expiration of the applicable then-current term.

PASS-THROUGH PROVISIONS

Where pass-through provisions are applicable to third-party products and services, these provisions are referenced by a pass-through code in the "Solutions and Services" section of this Cerner System Schedule, and that code can be entered at <https://passthroughprovisions.cerner.com/> to view the pass-through provisions. These pass-through provisions are incorporated into this Cerner System Schedule by reference.

ASSIGNMENT OF PAYMENTS

Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner System Schedule in whole or in part to an assignee. Client will promptly acknowledge each assignment or granting of a

security interest. Cerner will continue to perform its obligations under the Agreement following such assignment or granting of a security interest.

FINANCIAL OVERVIEW

Description	One-Time Fees	Monthly Fees	Annual Fees
Subscriptions	-	10,971.00	-
Managed Services	-	1,250.00	-
Professional Services			
Fixed Fee	22,410.00	-	-
Fee For Service	65,280.00	-	-
TOTALS:	87,690.00	12,221.00	-

All prices in this Cerner System Schedule are shown in US Dollar (USD).

SOLUTIONS AND SERVICES

SUBSCRIPTIONS

Solution Code	Description	Qty	Scope	Term (Mo)	One-Time Fees	Monthly Fees	Solution Description Code	Pass-Through Code
Quote: Technology - Site License (1-13879412289-R-3)								
DMOIP-UPG-SVC	DM One, Upgrade from DMNE, Term, IP Admissions, Lic	13,514	Admissions	60		1,984		58730_NUA
DMOED-UPG-SVC	DM One, Upgrade from DMNE, Term, ED Visits, Lic	59,582	ED Visits	60		1,618		58730_NUA
DMOOP-UPG-SVC	DM One, Upgrade from DMNE, Trm, Outpatient Visit Lic	213,286	Outpatient Visits	60		3,172		58730_NUA
PMOBILE-IPS-SVC	PowerMic Mobile Inpatient License	13,514	Admissions	60		470		58750_NUA
PMOBILE-EDS-SVC	PowerMic Mobile Emergency Medicine License	59,582	ED Visits	60		390		58750_NUA
PMOBILE-OPS-SVC	PowerMic Mobile Outpatient License	213,286	Outpatient Visits	60		761		58750_NUA
DMAIP-TERM	DMA w Core&HCC Specificity Content, Svc, Trm, IP Adms	13,514	Inpatient Admissions	60		676		58730_NUA
DMAED-TERM	DMA wCore&HCC SpecificityContent, Hosted, Trm, EDVisits	59,582	ED Visits	60		715		58730_NUA
DMAOP-TERM	DMA wCore&HCC Specificity Content, Hosted, Trm, IP Adms	213,286	Outpatient Visits	60		1,186		58730_NUA

MANAGED SERVICES

Solution Code	Description	Qty	Scope	Monthly Range	Term (Mo)	One-Time Fees	Monthly Fees	Solution Description Code	Pass-Through Code
Quote: Technology- RHO (DMO) (1-13879400101-R-1)									
CFG_CMS	CernerWorks	1	Each						
CTS-RHO1TIME	Remote Hosting (One-time Setup Fees)	1	Each						10400_MSR
CTS-RHORECUR	Remote Hosting (Recurring Fees)	1	Each	1 to 60	60		1,250		10400_MSR

PROFESSIONAL SERVICES

Phase	Project	**Bill Type	Solution	Rate	Metric	Qty	Fees	Pass-Through Code
Quote: Learning Services (1-13901230932-R-2)								
1	Adoption Coaching	FFS	Adoption Coaching					
			Learning Specialist - Physician Adoption Dragon	102	Hour	640	65,280	

Phase	Project	**Bill Type	Solution	Rate	Metric	Qty	Fees	Pass-Through Code
Quote: Technology - Site License (1-13879412289-R-3)								
1	TP Nuance V Rec AMT	FF	Customer Success Management Services				13,020	
1	TP Nuance V Rec AMT	FF	DM360D - Project Management Services				315	
1	TP Nuance V Rec AMT	FF	DMA Train-the-Trainer				1,260	
1	TP Nuance V Rec AMT	FF	DMA Administrator training				315	
1	VR Services FF	FF	Nuance Dragon Direct Installation Services				7,500	

**FF = Fixed Fee / FFS = Fee For Service

Professional services pricing is valid until April 09, 2019. If a Cerner System Schedule is not executed on or before such date, this pricing is considered null and void and will be subject to revision. Cerner will not schedule resources for implementation services until this Cerner System Schedule has been executed by both parties and processed by Cerner.

SCOPE OF SERVICES

This section defines the service deliverables ("**Scope**") for the services set forth in this Cerner System Schedule.

MANAGED SERVICES

REMOTE HOSTING OPTION (RHO) SERVICES

SCOPE OF USE LIMITS

Cerner Solutions. The managed services fees set forth in the "Solutions and Services" section of this Ordering Document are based on the following scope of use limits, and apply only to RHO services for the Cerner solution(s) set forth below:

Scope of Use Metric	Scope of Use Limit
Cerner Solutions to be Hosted	Dragon Medical One (via Nuance Cloud System)

OTHER SCOPE LIMITS

Dragon Medical One (via Nuance Cloud system)

- (250) Dragon Medical One users
- Cerner will provide hosting capacity to support the integration of Dragon Medical One
- Dragon Medical One Users will be measured in accordance with Nuance's application licensing and as measured by Nuance's Annual Billing Period reviews
- Client responsible for installation and support of client site servers and/or peripheral devices required for transcription (e.g., local workstations, microphones, etc.) and end user training
- Client responsible for internet bandwidth required for application communication (refer to Nuance Dragon Medical One documentation for details)

General Assumptions

- The basic roles and responsibilities of Cerner and Client for the Cerner solution hosting will be the same as set forth in the Ordering Document originally executed between the parties for RHO services.
- Solutions will run in Client's existing production domain being remote hosted by Cerner.
- Managed services fees do not include Licensed Software, Sublicensed Software, Licensed Software Support, Maintenance, or professional services.
- Cerner provides the Layered Software needed to deliver core RHO services (e.g., OS, middleware etc.).
- The fees set forth in the "Solutions and Services" section of this Ordering Document apply only to the addition of the solutions to the RHO scope. Fees do not include the potential impact of additional Users. If the addition of these solutions results in additional concurrent logons and the necessity to expand the Peak Concurrent Logon scope limit, this will be addressed pursuant to the scope expansion pricing for Peak Concurrent Logons set forth in the Ordering Document originally executed between the parties for the RHO services

REMOTE HOSTING OPTION (RHO) SERVICES

SCOPE OF USE EXPANSION

In the event a scope of use limit set forth in the "Scope of Use Limits" section of this Scope is exceeded, Client agrees to expand the scope of use and pay the additional managed services fees set forth below for the applicable scope limit that has been exceeded.

Cerner Solutions			
Scope of Use Metric	Extending Scope of Use Limit By	Additional One-Time Fees	Additional Monthly Fees
Dragon Medical One Users	(100) Users	\$0	\$500

All Prices are in US Dollar (USD)

Client's scope of use will be measured periodically by Cerner's system tools. Client agrees that if an event occurs that will materially affect Client's scope of use (such as acquisition of a new facility, change in number of Users, change in number of thick Client workstations, etc.), Client will promptly notify Cerner in writing no more than 60 days following the effective date of such event so that Client's scope of use can be reviewed.

PROFESSIONAL SERVICES

LEARNING SERVICES SCOPE DRAGON MEDICAL TRAINING SERVICES

Cerner Responsibilities	<ul style="list-style-type: none"> • Create and deliver Dragon Medical and <i>PowerChart</i> specific user training curriculum that addresses application, workflow, and process changes • Deliver quick reference card and job aids • Facilitate changes that are a result of the Dragon Medical solution implementation • Track and report issues for appropriate action • Test workflows and functionality to identify any technical or domain performance issues prior to scheduled training
Client Responsibilities	<ul style="list-style-type: none"> • Provide roster of users by role and facility • Enforce end-user training compliance • Provide Cerner access, familiarity to both TRAIN and production domains • Provide sign on information for Cerner and each trainee with appropriate role privileges
Joint Responsibilities	<ul style="list-style-type: none"> • Coordinate training schedule, registration, and logistics • Identify training related risk areas • Determine custom command and word management strategy • Create and test custom commands and words • Define training metrics
Assumptions	<ul style="list-style-type: none"> • Client has a basic understanding of <i>PowerChart</i> • Users will have basic computer skills • Facilitated group laboratory training includes PowerPoint instruction, guided exercises, checklists, preferences-setting, homework, and an assessment • Cerner is not responsible for communicating functionality updates to users
Training Plan Kickoff	
Cerner Responsibilities	<ul style="list-style-type: none"> • Provide learning consultant to help facilitate, define, and execute the Dragon Medical software

**LEARNING SERVICES SCOPE
DRAGON MEDICAL TRAINING SERVICES**

	<p>training engagement to:</p> <ul style="list-style-type: none"> o Review Client's current dictation workflow o Tailor training needs to match future state workflow o Recommend deployment, configuration and training strategies
Assumptions	<ul style="list-style-type: none"> • Total hours in this Scope are calculated at 16 hours • Cerner will work with Client to provide the training service on an agreed upon schedule
Standard Training Materials	
Cerner Responsibilities	<ul style="list-style-type: none"> • Complete learning materials for Dragon Medical <ul style="list-style-type: none"> o All materials developed for physicians will focus on learning gaps and standard workflows o Learning materials will include instructor and participant guide as necessary, job aids, practice scenarios and competency assessments
Assumptions	<ul style="list-style-type: none"> • Workflow has been determined and provided as the baseline for these materials • Materials will be developed for physicians • Cerner will work with the Client to provide the materials on an agreed upon schedule

Physician Dragon Training Services

Objectives	<ul style="list-style-type: none"> • Develop full understanding of Dragon Medical functionality, solidify dictation style, and gain confidence while dictating sample progress notes • Optimize application settings and preferences • Develop and test custom words/commands to improve accuracy and optimize workflow prior to go-live • Introduce advanced Dragon Medical software functionality • Define <i>PowerChart</i> workflow with the inclusion of Dragon Medical • Perform provider specific mock visits • Address questions regarding core concepts and functionality prior to go-live
Cerner Responsibilities	<ul style="list-style-type: none"> • Staff computer lab setting (Learning LAB) and provide training services • Provide 84 total hours of coaching/instruction for the engagement for 250 providers <ul style="list-style-type: none"> o Approximately 2 hours of coaching per user group; Assumes a maximum of 6 providers per group. o If the number of users changes significantly from this assumption, Cerner will review available training hours with Client and determine if more hours are needed o Total hours in this Scope are calculated at an average of 36 hours per week plus prep. Cerner will work with Client to determine engagement dates and schedule
Client Responsibilities	<ul style="list-style-type: none"> • Physicians will attend training in Learning LAB <ul style="list-style-type: none"> o Cerner recommends that 100% of all physicians be required to demonstrate competency with the Dragon Medical software at the end of the training session

Continuous Adoption Coaching

Objectives	<ul style="list-style-type: none"> • Develop full understanding of Dragon Medical functionality, solidify dictation style, and gain confidence while dictating sample progress notes • Optimize application settings and preferences • Develop and test custom words/commands to improve accuracy and optimize workflow • Introduce advanced Dragon Medical software functionality • Define <i>PowerChart</i> workflow with the inclusion of Dragon Medical • Perform provider specific mock visits
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LEARNING SERVICES SCOPE DRAGON MEDICAL TRAINING SERVICES	
	<ul style="list-style-type: none"> Address questions regarding core concepts and functionality Increase level of adoption and satisfaction by developing an extensive vocabulary for higher accuracy Define Dragon Medical software integrated point-of-care workflow
Cerner Responsibilities	<ul style="list-style-type: none"> Three (3) weeks of optimization support utilizing five (5) coach(es). Total hours in this Scope are calculated at an average of 36 hours per week.
Additional Notes	
Completion Criteria	<ul style="list-style-type: none"> All fee(s) for service(s) provided in this Scope will be considered complete when the respective hours are worked. Cerner will provide an option, no later than 2 weeks before hours are worked, to extend the current resources under a new arrangement for additional hours. All fixed fee services provided in this Scope will be considered complete when the deliverables have been provided to Client.
Modifications	<ul style="list-style-type: none"> This engagement includes only the items set forth in this Scope. A new Cerner Sales Order must be executed by the parties if Client requests additional tasks beyond those set forth herein. In the event Client requests additional work effort or otherwise modifies the scope set forth herein, Client and Cerner will assess the financial and delivery timeline implications of such changes and will work together to reach a mutually agreeable solution. Jointly, Client and Cerner will discuss, document, and request approval regarding fees and delivery implications of additional work effort(s) prior to any scope expansion.
Suspension or Rescheduling	<ul style="list-style-type: none"> In the event Client requests that this project be rescheduled or suspended, Client will pay costs for hours worked and travel expenses incurred, up to and including the date of shut down. Additional fees may be incurred when the project resumes, including, but not limited to, increased professional service rates, planning, defining scope, reviewing and documenting completed work, and educating new project team members (Client will not incur additional fees if the delay is mutually acceptable between Client and Cerner). Client acknowledges that Cerner is not obligated to provide the same project team members that were assigned to the project prior to the suspension.
Travel	<ul style="list-style-type: none"> Resource assignments and travel arrangements including but not limited to, Client site visits, require a minimum of 10 calendar days of preparation time from the date this Scope is executed. It is anticipated coaches will work a maximum of 4 consecutive days at Client facility with 2 consecutive days off free of travel. It is anticipated that coaching will be no more than 9 hours per day The professional services fees do not include travel, lodging, per diem, or other out-of-pocket expenses incurred by Cerner personnel. Such expenses will be billed to Client based upon the terms of the underlying Agreement.
Assumptions	<ul style="list-style-type: none"> All deliverables remain the sole and exclusive property of Cerner, and may only be used as detailed and agreed upon by this Scope.

NUANCE DRAGON MEDICAL ONE INSTALLATION SERVICES (CTS-DRAGON-DIRECT-INSTALL)	
<p>Nuance Dragon Medical One is a cloud-based clinical documentation solution that allows clinicians to capture the complete patient story with their voices while allowing health care organizations to easily deploy medical speech recognition across the enterprise.</p>	
Overview	<ul style="list-style-type: none"> Cerner will provide technical consultation and implementation services to install Nuance Dragon Medical One.
Cerner	<ul style="list-style-type: none"> Schedule and conduct pre-install review discussion with Client

NUANCE DRAGON MEDICAL ONE INSTALLATION SERVICES
(CTS-DRAGON-DIRECT-INSTALL)

Responsibilities	<ul style="list-style-type: none"> • Provide pre-install checklist document to Client • Conduct a discovery call to: <ul style="list-style-type: none"> ◦ Determine facilities, departments, or units that are included in scope ◦ Define roles and responsibilities ◦ Determine timelines for implementation and projected go-live date ◦ Confirm remote access requirements for the installation ◦ Review Client workstation hardware to meet the minimum requirements of the application ◦ Confirm pre-install requirements have been completed • Install Nuance Dragon Medical One • Install and configure up to 5 Client workstations with Nuance Dragon Medical One • Conduct post-install validation confirming: <ul style="list-style-type: none"> ◦ Sites, group structure created, and users assigned to groups ◦ Roles function as expected (administrator, account administrator, etc.) ◦ User profiles created and profile paths validated ◦ User licenses assigned • Conduct technical training <ul style="list-style-type: none"> ◦ Conduct Nuance Dragon Help Desk Training off or on-site for up to 6 Client attendees ◦ Conduct Nuance Dragon Administrator Training for up to 6 Client attendees ◦ Provide a technical review of the Nuance Dragon solution, troubleshooting tips and tricks, escalation paths and responsibilities, and frequently asked questions
Deliverables	<ul style="list-style-type: none"> • Nuance Dragon Medical One installation • Nuance Dragon Medical One technical architecture document provided • Nuance Dragon Medical One validation performed • Administrator training • Help desk training
Assumptions	<ul style="list-style-type: none"> • Certain tasks are dependent on the availability of Client technical personnel for verification and testing. Cerner will identify those Client tasks at the beginning of the project to facilitate scheduling and coordination. • Client is responsible for installing necessary software on Citrix servers unless remotely hosted. <ul style="list-style-type: none"> ◦ Cerner will provide installation services for remotely hosted clients. • Client workstations meet minimum requirements. • Technical support will be provided for 30 days post-go-live of first go-live event. After initial go-live event, support will transition to Cerner's Solution Works organization. Additional support for future go-live events may be contracted for as needed. • This engagement includes only the items set forth in this Scope. A new Ordering Document must be executed by the parties if Client requests additional tasks beyond those set forth herein.

NUANCE PROFESSIONAL SERVICES
(DMO-1610)

Customer Success Management Services	<p>Customer Success Management Services</p> <p>Assigned Customer Success Manager (CSM)</p> <p>Success Planning – Identify customer desired business and clinical outcomes; build customer</p>
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NUANCE PROFESSIONAL SERVICES

(DMO-1610)

	success roadmap; establish clear success criteria as measured by quantitative KPIs Outcome Monitoring & Management – Continuous license utilization, clinician adoption, and clinician efficiency monitoring; usage and behavioral pattern analytics; proactive communication, intervention, and course correction to ensure customer success; regular business reviews ROI Optimization – Business and clinical outcomes tracking and management; leveraging best practices for ROI maximization Consulting – As-needed services around industry trends, benchmarking, and opportunities to drive additional value
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NUANCE PROFESSIONAL SERVICES

(DMA-100)

DMA Train-the-Trainer	8 hrs. for up to 4 trainers in Group Training sessions. <ul style="list-style-type: none"> • 60 minute Classroom; Trainers observe Nuance trainer conduct 1 group sessions. • Nuance trainer observes client trainers conduct 1 group training session each
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NUANCE PROFESSIONAL SERVICES

(DMA-200)

DMA Admin	HIM, Coding & CDI staff (supporting CDI staff) <ul style="list-style-type: none"> • Outcome planning during project initiation phase & follow-up 30 days post go-live • Reporting/Metrics review and analysis • Development of long term DMA strategy to deploy DMA as part of ongoing documentation program *Required for every new DMA install
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NUANCE PROFESSIONAL SERVICES

(DMD-130)

Dragon Medical 360 Direct - Project Management	Project Management activities include definition of project goals, ensuring project alignment with organizational goals; development and tracking of implementation plans; communication and marketing guidance; training plans and scheduling; change management; managing, logging and driving resolution of issues; regular status calls and post training follow up activities.
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Client: Kern County Hospital Authority
 1700 Mount Vernon Ave
 Bakersfield, CA 93306-4018 USA

Subject: Solution Delivery

Document ID: 1-6DJE6AU

This Event Activity Report (“EAR”) serves as confirmation that delivery has occurred of the solutions set forth below. This delivery event does not include customization or implementation of such solutions.

Solution Family	Solution Code	Solution Description
Remote Hosting	Remote Hosting One Time Fee	WTS Location Toolkit
Remote Hosting	Remote Hosting One Time Fee	Olympus Threshold and Alerting
Remote Hosting	Remote Hosting One Time Fee	High Availability (HA) Toolkit

I acknowledge that delivery of these solutions occurred on _____
 (Date)

The following signature represents completion of this delivery event.

ACCEPTED FOR KERN COUNTY HOSPITAL AUTHORITY

By: _____

(type or print)

Title: _____



Cerner™ EXECUTION INVOICE

Client: Kern County Hospital Authority
1700 Mount Vernon Ave
Bakersfield, CA 93306-4018

Invoice No: EXEC CSS No. 11
Invoice Date: Effective Date
Due Date: Effective Date

Remit: **Via FedEx:**
Cerner Corporation
Attn: Accounts Receivable, 5th Floor
2800 Rockcreek Parkway
Kansas City, MO 64117

OR

Via Wire Transfer:
ABA Routing Number: 101000187
Bank: US Bank
For Further Deposit to Bank Account: 5290000743

TOTAL AMOUNT DUE: \$146,607

Sales tax, if applicable, will be invoiced separately.

Description	Total Solution Amount	Percent Payable	Net Amount
SUBSCRIPTION MONTHLY FEES - Year 1	\$131,652	100%	\$131,652
MANAGED SERVICES MONTHLY FEES - 1st Quarter	\$3,750	100%	\$3,750
PROFESSIONAL SERVICES FEES - Fixed Fee	\$22,410	50%	\$11,205
Grand Total:			\$146,607



Kern County Hospital Authority
1-6DJE6AU
January 09, 2019



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed Master Lease Agreement and Supplements with Dell Financial Services, L.L.C.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board’s approval of the proposed Master Lease Agreement and Supplements with Dell Financial Services, L.L.C., for the financing of desktop computers required for the Cerner Millennium Project which entails the creation and installation of the Electronic Healthcare Record for Kern Medical.

Engagement with Dell Financial Services, L.L.C. to lease desktop computers will initiate Kern Medical’s technology four (4) year lifecycle strategy. Kern Medical has over 800 computers that will require replacement over the next four (4) years and this leasing program provides an improved forecasting of technology needs, a strategic plan to leverage required technology as needed, and additional Dell services, including pre-imaged ready personal computers and end of life e-waste processing.

The lease agreement is for a 48 month term and the monthly payment will be equal to the total Equipment Cost times the Adjusted Lease Factor. The Adjusted Lease Factor will be determined as of the acceptance date and will be equal to, as noted below, the Rate Factor.

Model	Price	Quantity	Ext	Rate Factor	Monthly Payment
Dell Optiplex 7060MFF	\$ 700.84	824	\$ 577,492.16	0.02433	\$ 14, 050.38
Dell 24 Monitor P2419H	\$ 164.91	1648	\$ 271,771.68	0.02643	\$ 7,182.93
Dell Micro All In One Stand	\$ 61.89	824	\$ 50,997.36	0.02704	\$ 1,378.97
Shipping/Tax	\$ 1.00	1	\$ 1.00		\$.03
Totals	\$ 928.64	3297	\$ 900,262.20		\$ 22,612.31

The proposed Lease Agreement and supplements has a term length effective February 20, 2019 through February 19, 2023, in an amount not to exceed \$ 900,263 (monthly \$22,613) which includes all required hardware technology and services.

The Agreement contains non-standard terms and cannot be approved as to form by Counsel due to no indemnification terms, the assignment of the lease does not relieve KCHA of liability, and waiver of jury trial.



<p>LESSOR: DELL FINANCIAL SERVICES L.L.C.</p> <p><u>Mailing Address:</u> One Dell Way Round Rock, TX 78682</p>	<p>LESSEE: KERN COUNTY HOSPITAL AUTHORITY</p> <p><u>Principal Address:</u> PO BOX 3519 BAKERSFIELD, CA 93385</p>
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This Master Lease Agreement ("Agreement"), effective as of the Effective Date set forth above, is between the Lessor and Lessee named above. Capitalized terms have the meaning set forth in this Agreement.

or extensions thereof, is defined as the "Lease Term". The Lease is noncancelable by Lessee, except as expressly provided in Section 5.
4. RENT; TAXES; PAYMENT OBLIGATION.

1. LEASE.

Lessor hereby leases to Lessee and Lessee hereby leases the equipment ("Products"), Software (defined below), and services or fees, where applicable, as described in any lease schedule ("Schedule"). Each Schedule shall incorporate by reference the terms and conditions of this Agreement and contain such other terms as are agreed to by Lessee and Lessor. Each Schedule shall constitute a separate lease of Products ("Lease"). In the event of any conflict between the terms of a Schedule and the terms of this Agreement, the terms of the Schedule shall prevail. Lessor reserves all rights to the Products not specifically granted to Lessee in this Agreement or in a Schedule. Execution of this Agreement does not create an obligation of either party to lease to or from the other.

(a) The rental payment amount ("Rent") and the payment period for each installment of Rent ("Payment Period") shall be stated in the Schedule. A prorated portion of Rent calculated based on a 30-day month, 90-day quarter or 360-day year (as appropriate) for the period from the Acceptance Date to the Commencement Date shall be added to the first payment of Rent. All Rent and other amounts due and payable under this Agreement or any Schedule shall be paid to Lessor in lawful funds of the United States of America at the payment address for Lessor set forth above or at such other address as Lessor may designate in writing from time to time. Whenever Rent and other amounts payable under a Lease are not paid when due, Lessee shall pay interest on such amounts at a rate equal to the lesser of 1% per month or the highest such rate permitted by applicable law ("Overdue Rate"). Rent shall be due and payable whether or not Lessee has received an invoice showing such Rent is due. Late charges and reasonable attorney's fees necessary to recover Rent and other amounts owed hereunder are considered an integral part of this Agreement.

2. ACCEPTANCE DATE; SCHEDULE.

(a) Subject to any right of return provided by the Product seller ("Seller"), named on the Schedule, Products are deemed to have been irrevocably accepted by Lessee upon delivery to Lessee's ship to location ("Acceptance Date"). Lessee shall be solely responsible for unpacking, inspecting and installing the Products.

(b) EACH LEASE SHALL BE A NET LEASE. In addition to Rent, Lessee shall pay sales, use, excise, purchase, property, added value or other taxes, fees, levies or assessments lawfully assessed or levied against Lessor or with respect to the Products and the Lease (collectively "Taxes"), and customs, duties or surcharges on imports or exports (collectively, "Duties"), plus all expenses incurred in connection with Lessor's purchase and Lessee's use of the Products, including but not limited to shipment, delivery, installation, and insurance. Unless Lessee provides Lessor with a tax exemption certificate acceptable to the relevant taxing authority prior to Lessor's payment of such Taxes, Lessee shall pay to Lessor all Taxes and Duties upon demand by Lessor. Lessor may, at its option, invoice Lessee for estimated personal property tax with the Rent Payment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Products.

(b) Lessor shall deliver to Lessee a Schedule for Products. Lessee agrees to sign or otherwise authenticate (as defined under the Uniform Commercial Code, "UCC") and return each Schedule by the later of the Acceptance Date or five (5) days after Lessee receives a Schedule from Lessor. If the Schedule is not signed or otherwise authenticated by Lessee within the time provided in the prior sentence, then upon written notice from Lessor and Lessee's failure to cure within five (5) days of such notice, Lessor may require the Lessee to purchase the Products by paying the Product Cost charged by the Seller, plus any shipping charges, Taxes or Duties (defined below) and interest at the Overdue Rate accruing from the date the Products are shipped through the date of payment. If Lessee returns any leased Products in accordance with the Seller's return policy, it will notify Lessor. When Lessor receives a credit from the Seller for the returned Product, the Schedule will be deemed amended to reflect the return of the Product and Lessor will adjust its billing records and Lessee's invoice for the applicable Lease. In addition, Lessee and Lessor agree that a signed Schedule may be amended by written notice from Lessor to Lessee provided such notice is (i) to correct the serial (or service tag) number of Products or (ii) to adjust the related Rent (defined below) on the Schedule (any increase up to 15% or any decrease) caused by any change made by Lessee in Lessee's order with the Seller.

(c) EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5, LESSEE'S OBLIGATION TO PAY ALL RENT AND OTHER AMOUNTS WHEN DUE AND TO OTHERWISE PERFORM AS REQUIRED UNDER THIS AGREEMENT AND EACH SCHEDULE SHALL BE ABSOLUTE AND UNCONDITIONAL, AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM, INTERRUPTION, DEFERMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER WHETHER ARISING OUT OF ANY CLAIMS BY LESSEE AGAINST LESSOR, LESSOR'S ASSIGNS, THE SELLER, OR THE SUPPLIER OR MANUFACTURER OF THE PRODUCTS, TOTAL OR PARTIAL LOSS OF THE PRODUCTS OR THEIR USE OR POSSESSION, OR OTHERWISE. If any Product is unsatisfactory for any reason, Lessee shall make its claim solely against the Seller of such Product (or the Licensor in the case of Software, as defined below) and shall nevertheless pay Lessor or its assignee all amounts due and payable under the Lease.

3. TERM.

The initial term (the "Primary Term") for each Lease shall begin on the date set forth on the Schedule as the Commencement Date (the "Commencement Date"). The period beginning on the Acceptance Date and ending on the last day of the Primary Term, together with any renewals

5. APPROPRIATION OF FUNDS.

(a) Lessee intends to continue each Schedule for the Primary Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Primary Term can be obtained and agrees to do all things lawfully within its power to obtain and maintain funds from which the Rent and other amounts due may be paid.

(b) Lessee may terminate a Schedule in whole, but not in part by giving at least sixty (60) days notice prior to the end of the then current Fiscal Period (as defined in the Lessee's Secretary/Clerk's Certificate provided to Lessor) certifying that: (1) sufficient funds were not appropriated and budgeted by Lessee's governing body or will not otherwise be available to continue the Lease beyond the current Fiscal Period; and (2) that the Lessee has exhausted all funds legally available for payment of the Rent beyond the current Fiscal Period. Upon termination of the Schedule, Lessee's obligations under the Schedule (except those that expressly survive the end of the Lease Term) and any interest in the Products shall cease and Lessee shall surrender the Products in accordance with Section 8. Notwithstanding the foregoing, Lessee agrees that, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, it will use its best efforts to take all action necessary to avoid termination of a Schedule, including making budget requests for each Fiscal Period during each applicable Lease Term for adequate funds to meet its Lease obligations and to continue the Schedule in force..

(c) Lessor and Lessee intend that the obligation of Lessee to pay Rent and other amounts due under a Lease constitutes a current expense of Lessee and is not to be construed to be a debt in contravention of any applicable constitutional or statutory limitation on the creation of indebtedness or as a pledge of funds beyond Lessee's current Fiscal Period.

6. LICENSED MATERIALS.

Software means any operating system software or computer programs included with the Products (collectively, "Software"). "Licensed Materials" are any manuals and documents, end user license agreements, evidence of licenses, including, without limitation, any certificate of authenticity and other media provided in connection with such Software, all as delivered with or affixed as a label to the Products. Lessee agrees that this Agreement and any Lease (including the sale of any Product pursuant to any purchase option) does not grant any title or interest in Software or Licensed Materials. Any use of the terms "sell," "purchase," "license," "lease," and the like in this Agreement or any Schedule with respect to Software shall be interpreted in accordance with this Section 6.

7. USE; LOCATION; INSPECTION.

Lessee shall: (a) comply with all terms and conditions of any Licensed Materials; and (b) possess and operate the Products only (i) in accordance with the Seller's supply contract and any service provider's maintenance and operating manuals, the documentation and applicable laws; and (ii) for the business purposes of Lessee. Lessee agrees not to move Products from the location specified in the Schedule without providing Lessor with at least 30 days prior written notice, and then only to a location within the continental United States and at Lessee's expense. Without notice to Lessor, Lessee may temporarily use laptop computers at other locations, including outside the United States, provided Lessee complies with the United States Export Control Administration Act of 1979 and the Export Administration Act of 1985, as those Acts are amended from time to time (or any successor or similar legislation). Provided Lessor complies with Lessee's reasonable security requirements, Lessee shall allow Lessor to inspect the premises where the Products are located from time to time during reasonable hours after reasonable notice in order to confirm Lessee's compliance with its obligations under this Agreement.

8. RETURN.

At the expiration or earlier termination of the Lease Term of any Schedule, and except for Products purchased pursuant to any purchase option under the Lease, Lessee will (a) remove all proprietary data from the Products and (b) return them to Lessor at a place within the contiguous United States designated by Lessor. Upon return of the Products, Lessee's right to the operating system Software in returned Products will terminate and Lessee will return the Products with the original certificate of authenticity (attached and unaltered) for the original operating system Software. Lessee agrees to deinstall and package the Products for return in a manner which will protect them from damage. Lessee shall pay all costs associated with the packing and return of the Products and shall promptly reimburse Lessor for all costs and expenses for missing or damaged Products or operating system Software. If Lessee fails to return all of the Products at the expiration of the Lease Term or earlier termination (other than for non-appropriation) in accordance with this Section, the Lease Term with respect to the Products that are not returned shall continue to be renewed as described in the Schedule.

9. RISK OF LOSS; MAINTENANCE; INSURANCE.

(a) From the date the Products are delivered to Lessee's ship to location until the Products are returned to Lessor's designated return location or purchased by Lessee, Lessee agrees: (i) to assume the risk of loss or damage to the Products; (ii) to maintain the Products in good operating condition and appearance, ordinary wear and tear excepted; (iii) to comply with all requirements necessary to enforce all warranty rights; and (iv) to promptly repair any repairable damage to the Products. During the Lease Term, Lessee at its sole discretion has the option to purchase a maintenance agreement from the provider of its choice (including, if it so chooses, to self-maintain the Products) or to forgo such maintenance agreement altogether; regardless of Lessee's choice, Lessee will continue to be responsible for its obligations as stated in the first sentence of this Section. At all times, Lessee shall provide the following insurance: (x) casualty loss insurance for the Products for no less than the Stipulated Loss Value (defined below) naming Lessor as loss payee; and (y) liability insurance with respect to the Products for no less than an amount as required by Lessor, with Lessor named as an additional insured; and (z) such other insurance as may be required by law which names Lessee as an insured and Lessor as an additional insured. Upon Lessor's prior written consent, Lessee may provide this insurance pursuant to Lessee's existing self insurance policy or as provided for under state law. Lessee shall provide Lessor with either an annual certificate of third party insurance or a written description of its self insurance policy or relevant law, as applicable. The certificate of insurance will provide that Lessor shall receive at least ten (10) days prior written notice of any material change to or cancellation of the insurance policy or Lessee's self-insurance program, if previously approved by Lessor. If Lessee does not give Lessor evidence of insurance in accordance with the standards herein, Lessor has the right, but not the obligation, to obtain such insurance covering Lessor's interest in the Products for the Lease Term, including renewals. If Lessor obtains such insurance, Lessor will add a monthly, quarterly or annual charge (as appropriate) to the Rent to reimburse Lessor for the insurance premium and Lessor's then current insurance administrative fee.

(b) If the Products are lost, stolen, destroyed, damaged beyond repair or in the event of any condemnation, confiscation, seizure or expropriation of such Products ("Casualty Products"), Lessee shall promptly (i) notify Lessor of the same and (ii) pay to Lessor the Stipulated Loss Value for the Casualty Products. The Stipulated Loss Value is an amount equal to the sum of (a) all Rent and other amounts then due and owing (including interest at the Overdue Rate from the due date until payment is received) under the Lease, plus (b) the present value of all future Rent to become due under the Lease during the remainder of the Lease Term, plus (c) the present value of the estimated in place Fair Market Value of the Product at the end of the Primary Term as determined by Lessor; plus (d) all other amounts to become due and owing during the remaining Lease Term. Unless priced as a tax-exempt Schedule, each of (b) and (c) shall be calculated using the federal funds rate target reported in the Wall Street Journal on the Commencement Date of the applicable Schedule. The discount rate applicable to tax-exempt Schedules shall be federal funds

rate target reported in the Wall Street Journal on the Commencement Date of the applicable Schedule less 100 basis points.

10. ALTERATIONS.

Lessee shall, at its expense, make such alterations to Products during the Lease Term as are legally required or provided at no charge by Seller. Lessee may make other alterations, additions or improvements to Products provided that any alteration, addition or improvement shall be readily removable and shall not materially impair the value or utility of the Products. Upon the return of any Product to Lessor, any alteration, addition or improvement that is not removed by Lessee shall become the property of Lessor free and clear of all liens and encumbrances.

11. REPRESENTATIONS AND WARRANTIES OF LESSEE.

Lessee represents, warrants and covenants to Lessor and will provide to Lessor at Lessor's request all documents deemed necessary or appropriate by Lessor, including Certificates of Insurance, financial statements, Secretary or Clerk Certificates, essential use information or documents (such as affidavits, notices and similar instruments in a form satisfactory to Lessor) and Opinions of Counsel (in substantially such form as provided to Lessee by Lessor and otherwise satisfactory to Lessor) to the effect that, as of the time Lessee enters into this Agreement and each Schedule that:

(a) Lessee is an entity duly organized and existing under and by virtue of the authorizing statute or constitutional provisions of its state and is a state or political subdivision thereof as described in Section 103(a) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder as in effect and applicable to the Agreement or any Schedule, with full power and authority to enter into this Agreement and any Schedules and perform all of its obligations under the Leases;

(b) This Agreement and each Schedule have been duly authorized, authenticated and delivered by Lessee by proper action of its governing board at a regularly convened meeting and attended by the requisite majority of board members, or by other appropriate official authentication, as applicable, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement against Lessee;

(c) This Agreement and each Schedule constitute the valid, legal and binding obligations of Lessee, enforceable in accordance with their terms;

(d) No other approval, consent or withholding of objection is required from any federal, state or local governmental authority or instrumentality with respect to the entering into or performance by Lessee of the Agreement or any Schedule and the transactions contemplated thereby;

(e) Lessee has complied with such public bidding requirements and other state and federal laws as may be applicable to the Agreement and any Schedule and the acquisition by Lessee of the Products;

(f) The entering into and performance of the Agreement or any Schedule will not (i) violate any judgment, order, law or regulation applicable to Lessee; (ii) result in any breach of, or constitute a default under, any instrument to which the Lessee is a party or by which it or its assets may be bound; or (iii) result in the creation of any lien, charge, security interest or other encumbrance upon any assets of the Lessee or on the Products, other than those created pursuant to this Agreement;

(g) There are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best of Lessee's knowledge and belief is there any basis therefor, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the Agreement or any Schedule;

(h) The Products are essential to the proper, efficient and economic operation of Lessee or to the services which Lessee provides to its citizens. Lessee expects to make immediate use of the Products, for which it has an immediate need that is neither temporary nor expected to diminish during the applicable Lease Term. The Products will be used for the sole purpose of performing one or more of Lessee's governmental or

proprietary functions consistent within the permissible scope of Lessee's authority; and

(i) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds to make all Rent payments and other obligations under this Agreement and any Schedule during the current Fiscal Period, and such funds have not been expended for other purposes.

12. WARRANTY ASSIGNMENT; EXCLUSION OF WARRANTIES; LIMITATION OF LIABILITY; FINANCE LEASE.

(a) Provided no Event of Default has occurred and is continuing, Lessor assigns to Lessee for the Lease Term the benefit of any Product warranty and any right of return provided by any Seller.

(b) LESSEE ACKNOWLEDGES THAT LESSOR DID NOT SELECT, MANUFACTURE, SUPPLY OR LICENSE ANY PRODUCT AND THAT LESSEE HAS MADE THE SELECTION OF PRODUCTS BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON STATEMENTS MADE BY LESSOR OR ITS AGENTS. LESSOR LEASES THE PRODUCTS AS-IS AND MAKES NO WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR OR ITS ASSIGNEE FOR ANY LOSS, DAMAGE OR EXPENSE CAUSED BY OR WITH RESPECT TO ANY PRODUCTS.

(c) IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY SCHEDULE OR THE SALE, LEASE OR USE OF ANY PRODUCTS EVEN IF LESSOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES AND EVEN IF LESSEE ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT.

(d) Lessee agrees that it is the intent of both parties that each lease qualify as a statutory finance lease under Article 2A of the UCC. Lessee acknowledges either (i) that Lessee has reviewed and approved any written supply contract covering the Products purchased from the Seller for lease to Lessee or (ii) that Lessor has informed or advised Lessee, in writing, either previously or by this Agreement, that Lessee may have rights under the supply contract evidencing the purchase of the Products and that Lessee should contact the Seller for a description of any such rights. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LESSEE HEREBY WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC.

13. EVENTS OF DEFAULT.

It shall be an event of default hereunder and under any Schedule ("Event of Default") if:

(a) Lessee fails to pay any Rent or other amounts payable under this Agreement or any Schedule within 15 days after the date that such payment is due;

(b) Any representation or warranty made by Lessee to Lessor in connection with this Agreement, any Schedule or any other Document is at the time made materially untrue or incorrect;

(c) Lessee fails to comply with any other obligation or provision of this Agreement or any Schedule and such failure shall have continued for 30 days after notice from Lessor;

(d) Lessee (i) is generally not paying its debts as they become due or (ii) takes action for the purpose of invoking the protection of any bankruptcy or insolvency law, or any such law is invoked against or with respect to Lessee or its property and such petition is not dismissed within 60 days; or

(e) Any provision of this Agreement ceases to be valid and binding on Lessee, is declared null and void, or its validity or enforceability is contested by Lessee or any governmental agency or authority whereby the loss of such provision would materially adversely affect the rights or

security of Lessor, or Lessee denies any further liability or obligation under this Agreement; or

(f) Lessee is in default under any other lease, contract, or obligation now existing or hereafter entered into with Lessor or Seller or any assignee of Lessor.

14. REMEDIES: TERMINATION

(a) Upon an Event of Default under any Schedule all of Lessee's rights (including its rights to the Products), but not its obligations thereunder, shall automatically be cancelled without notice and Lessor may exercise one or more of the following remedies in its sole discretion:

(i) require Lessee to return any and all such Products in accordance with Section 8, or if requested by Lessor, to assemble the Products in a single location designated by Lessor and to grant Lessor the right to enter the premises where such Products are located (regardless of where assembled) for the purpose of repossession;

(ii) sell, lease or otherwise dispose of any or all Products (as agent and attorney-in-fact for Lessee to the extent necessary) upon such terms and in such manner (at public or private sale) as Lessor deems advisable in its sole discretion (a "Disposition");

(iii) declare immediately due and payable as a pre-estimate of liquidated damages for loss of bargain and not as a penalty, the Stipulated Loss Value of the Products in lieu of any further Rent, in which event Lessee shall pay such amount to Lessor within 10 days after the date of Lessor's demand; or

(iv) proceed by appropriate court action either at law or in equity (including an action for specific performance) to enforce performance by Lessee or recover damages associated with such Event of Default or exercise any other remedy available to Lessor in law or in equity.

(b) Lessee shall pay all costs and expenses arising or incurred by Lessor, including reasonable attorney fees, in connection with or related to an Event of Default or the repossession, transportation, re-furbishing, storage and Disposition of any or all Products ("Default Expenses"). In the event Lessor recovers proceeds (net of Default Expenses) from its Disposition of the Products, Lessor shall credit such proceeds against the owed Stipulated Loss Value. Lessee shall remain liable to Lessor for any deficiency. With respect to this Section, to the extent the proceeds of the Disposition (net of Default Expenses) exceed the Stipulated Loss Value owed under the Lease, or Lessee has paid Lessor the Stipulated Loss Value, the Default Expenses and all other amounts owing under the Lease, Lessee shall be entitled to such excess and shall have no further obligations with respect to such Lease. All rights of Lessor are cumulative and not alternative and may be exercised by Lessor separately or together.

15. QUIET ENJOYMENT.

Lessor shall not interfere with Lessee's right to possession and quiet enjoyment of Products during the relevant Lease Term, provided no Event of Default has occurred and is continuing. Lessor represents and warrants that as of the Commencement Date of the applicable Schedule, Lessor has the right to lease the Products to Lessee.

16. INDEMNIFICATION.

To the extent permitted by law, Lessee shall indemnify, defend and hold Lessor, its assignees, and their respective officers, directors, employees, representatives and agents harmless from and against, all claims, liabilities, costs or expenses, including legal fees and expenses (collectively, "Claims"), arising from or incurred in connection with this Agreement, any Schedule, or the selection, manufacture, possession, ownership, use, condition, or return of any Products (including Claims for personal injury or death or damage to property, and to the extent Lessee is responsible, Claims related to the subsequent use or Disposition of the Products or any data in or alteration of the Products. This indemnity shall not extend to any loss caused solely by the gross negligence or willful misconduct of Lessor. Lessee shall be responsible for the defense and

resolution of such Claim at its expense and shall pay any amount for resolution and all costs and damages awarded against or incurred by Lessor or any other person indemnified hereunder; provided, however, that any person indemnified hereunder shall have the right to participate in the defense of such Claim with counsel of its choice and at its expense and to approve any such resolution. Lessee shall keep Lessor informed at all times as to the status of the Claim.

17. OWNERSHIP; LIENS AND ENCUMBRANCES; LABELS.

As between Lessor and Lessee, title to Products (other than any Licensed Materials) is and shall remain with Lessor. Products are considered personal property and Lessee shall, at Lessee's expense, keep Products free and clear of liens and encumbrances of any kind (except those arising through the acts of Lessor) and shall immediately notify Lessor if Lessor's interest is subject to compromise. Lessee shall not remove, cover, or alter plates, labels, or other markings placed upon Products by Lessor, Seller or any other supplier.

18. NON PERFORMANCE BY LESSEE.

If Lessee fails to perform any of its obligations hereunder or under any Schedule, Lessor shall have the right but not the obligation to effect such performance and Lessee shall promptly reimburse Lessor for all out of pocket and other reasonable expenses incurred in connection with such performance, with interest at the Overdue Rate.

19. NOTICES.

All notices shall be given in writing and, except for billings and communications in the ordinary course of business, shall be delivered by overnight courier service, delivered personally or sent by certified mail, return receipt requested, and shall be effective from the date of receipt unless mailed, in which case the effective date will be four (4) Business Days after the date of mailing. Notices to Lessor by Lessee shall be sent to: Dell Financial Services L.L.C., Attn. Legal Department, One Dell Way, Round Rock, TX 78682, or such other mailing address designated in writing by Lessor. Notice to Lessee shall be to the address on the first page of this Agreement or such other mailing address designated in writing by Lessee.

20. ASSIGNMENT.

(a) LESSEE MAY ASSIGN THIS AGREEMENT OR ANY SCHEDULE, OR SUBLEASE ANY PRODUCT(S) WITH THE PRIOR WRITTEN CONSENT OF LESSOR (SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD). LESSOR, AT ITS SOLE DISCRETION, MAY ASSESS AN ADMINISTRATIVE FEE FOR ANY APPROVED ASSIGNMENT OR SUBLEASE. No assignment or sublease shall in any way discharge Lessee's obligations to Lessor under this Agreement or Schedule.

(b) Lessor may at any time without notice to Lessee, but subject to the rights of Lessee, transfer, assign, or grant a security interest in any Product, this Agreement, any Schedule, or any rights and obligations hereunder or thereunder in whole or in part. Lessee hereby consents to such assignments, agrees to comply fully with the terms thereof, and agrees to execute and deliver promptly such acknowledgments, opinions of counsel and other instruments reasonably requested to effect such assignment.

(c) Subject to the foregoing, this Agreement and each Schedule shall be binding upon and inure to the benefit of Lessor, Lessee and their successors and assigns.

21. GOVERNING LAW; JURISDICTION AND VENUE; WAIVER OF JURY TRIAL.

THIS AGREEMENT AND EACH SCHEDULE SHALL BE GOVERNED BY CALIFORNIA LAW WITHOUT REGARD TO ITS CONFLICTS OF LAWS PRINCIPLES AND, TO THE EXTENT APPLICABLE, THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. LESSEE

CONSENTS TO THE JURISDICTION OF ANY FEDERAL COURT LOCATED IN KERN COUNTY, CALIFORNIA, AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURT, AND FURTHER WAIVES ANY RIGHT TO A TRIAL BY JURY.

22. MISCELLANEOUS.

(a) The headings used in this Agreement are for convenience only and shall have no legal effect. This Agreement shall be interpreted without any strict construction in favor of or against either party.

(b) The provisions of Sections 6, 8, 11, 12(b), 12(c), 12(d), 16, 21 and 22 shall continue in full force and effect even after the term or expiration of this Agreement or any Schedule.

(c) Failure of Lessor at any time to require Lessee's performance of any obligation shall not affect the right to require performance of that obligation. No term, condition or provision of this Agreement or any Schedule shall be waived or deemed to have been waived by Lessor unless it is in writing and signed by a duly authorized representative of Lessor. A valid waiver is limited to the specific situation for which it was given.

(d) Lessee shall furnish such financial statements of Lessee (prepared in accordance with generally accepted accounting principles) and other information as Lessor may from time to time reasonably request.

(e) If any provision(s) of this Agreement is deemed invalid or unenforceable to any extent (other than provisions going to the essence of this Agreement) the same shall not in any respect affect the validity, legality or enforceability (to the fullest extent permitted by law) of the remainder of this Agreement, and the parties shall use their best efforts to replace such illegal, invalid or unenforceable provisions with an enforceable provision approximating, to the extent possible, the original intent of the parties.

(f) Unless otherwise provided, all obligations hereunder shall be performed or observed at the respective party's expense.

(g) Lessee shall take any action reasonably requested by Lessor for the purpose of fully effectuating the intent and purposes of this Agreement or any Schedule. If any Lease is determined to be other than a true lease, Lessee hereby grants to Lessor a first priority security interest in the Products and all proceeds thereof. Lessee acknowledges that by signing this Agreement, Lessee has authorized Lessor to file any financing statements or related filings as Lessor may reasonably deem necessary or appropriate. Lessor may file a copy of this Agreement or any Schedule in lieu of a financing statement.

(h) This Agreement and any Schedule may be signed in any number of counterparts each of which when so executed or otherwise authenticated and delivered shall be an original but all counterparts shall together constitute one and the same instrument. To the extent each Schedule would constitute chattel paper as such term is defined in the UCC, no security interest may be created through the transfer or control or possession, as applicable, of a counterpart of a Schedule other than the original in Lessor's possession marked by Lessor as either "Original" or "Counterpart Number 1".

(i) This Agreement and the Schedules hereto between Lessor and Lessee set forth all of the understandings and agreements between the parties and supersede and merge all prior written or oral communications, understandings, or agreements between the parties relating to the subject matter contained herein. Except as permitted herein, this Agreement and

any Schedule may be amended only by a writing duly signed or otherwise authenticated by Lessor and Lessee.

(j) If Lessee delivers this signed Master Lease, or any Schedule, amendment or other document related to the Master Lease (each a "Document") to Lessor by facsimile transmission, and Lessor does not receive all of the pages of that Document, Lessee agrees that, except for any pages which require a signature, Lessor may supply the missing pages to the Document from Lessor's database which conforms to the version number at the bottom of the page. If Lessee delivers a signed Document to Lessor as an e-mail attachment, facsimile transmission or by U.S. mail, Lessee acknowledges that Lessor is relying on Lessee's representation that the Document has not been altered. Lessee further agrees that, notwithstanding any rule of evidence to the contrary, in any hearing, trial or proceeding of any kind with respect to a Document, Lessor may produce a tangible copy of the Document transmitted by Lessee to Lessor by facsimile or as an e-mail attachment and such signed copy shall be deemed to be the original of the Document. To the extent (if any) that the Document constitutes chattel paper under the Uniform Commercial Code, the authoritative copy of the Document shall be the copy designated by Lessor or its assignee, from time to time, as the copy available for access and review by Lessee, Lessor or its assignee. All other copies are deemed identified as copies of the authoritative copy. In the event of inadvertent destruction of the authoritative copy, or corruption of the authoritative copy for any reason or as the result of any cause, the authoritative copy may be restored from a backup or archive copy, and the restored copy shall become the authoritative copy. At Lessor's option, this electronic record may be converted into paper form. At such time, such paper copy will be designated or marked as the authoritative copy of the Document.

EXECUTED by the undersigned on the dates set forth below, to be effective as of the Effective Date.

KERN COUNTY HOSPITAL AUTHORITY
"Lessee"

BY: _____

NAME: Russell E. Bigler

TITLE: Chairman, Board of Governors

DATE: _____

Dell Financial Services L.L.C.
"Lessor"

BY: _____

NAME: _____

TITLE: _____

DATE: _____

REVIEWED ONLY
NOT APPROVED AS TO FORM

By [Signature]
Legal Services Department



SECRETARY/CLERK CERTIFICATE

I, Mona A. Allen, do hereby certify that:

(i) I am the duly elected, qualified, and acting Clerk (Clerk, Secretary, etc.) of KERN COUNTY HOSPITAL AUTHORITY, a CA public entity (the "Public Entity").

(ii) Each of the persons whose name, title and signature appear below is a duly authorized representative of the Public Entity and holds on the date of this Certificate the formal title set forth opposite his/her name and the signature appearing opposite each such person's name is his/her genuine signature:

NAME OF AUTHORIZED SIGNATORY (cannot be Clerk/Secretary authenticating this certificate)	TITLE OF AUTHORIZED SIGNATORY	SIGNATURE OF AUTHORIZED SIGNATORY
<u>Russell E. Bigler</u>	<u>Chairman, Board of Governors</u>	_____
<u>Russell V. Judd</u>	<u>Chief Executive Officer</u>	_____
_____	_____	_____
_____	_____	_____

(iii) Each such representative is duly authorized for and on behalf of the Public Entity to execute and deliver that certain Master Lease Agreement No. 576662-50680 (the "Agreement") and any related Lease Schedules from time to time thereunder (the "Schedules") between the Public Entity and Customer, or its assignee (collectively, "Lessor"), and all agreements, documents, and instruments in connection therewith, including without limitation, schedules, riders and certificates of acceptance.

(iv) The execution and delivery of any such Agreement and/or Schedule and all agreements, documents, and instruments in connection therewith for and on behalf of the Public Entity are not prohibited by or in any manner restricted by the terms of the Charter or other document pursuant to which the Public Entity is organized or of any loan agreement, indenture or contract to which the Public Entity is a party or by which it or any of its property is bound.

(v) [STRIKE IF NOT APPLICABLE] The Public Entity did, at a duly called regular (regular or special) meeting of the governing body of the Public Entity attended throughout by the requisite majority of the members thereof held on the 20 day of February by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the Agreement, the related Schedule(s) and all agreements, documents, and instruments in connection therewith on behalf of the Public Entity by the authorized representative(s) of the Public Entity named in paragraph (ii) above. Such action approving the Agreement, the related Schedule(s) and all agreements, documents, and instruments in connection therewith and authorizing the execution thereof has not been altered or rescinded by the Public Entity.

(vi) No event or condition that constitutes (or with notice or lapse of time or both, would constitute) an Event of Default, as defined in the Agreement, exists at the date hereof.

(vii) All insurance required in accordance with the Agreement is currently maintained by the Public Entity.

(viii) The Public Entity has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Rent payments scheduled to come due during the first Fiscal Period and to

meet the Public Entity's other obligations for the first Fiscal Period, as such terms are defined in the Agreement, and such funds have not been expended for other purposes.

(ix) The Fiscal Period of the Public Entity is from July 1 to June 30.

(x) The foregoing authority and information shall remain true and in full force and effect, and Lessor shall be entitled to rely upon same, until written notice of the modification, rescission, or revocation of same in whole or in part, has been delivered to Lessor, but in any event shall be effective with respect to any documents executed or actions taken in reliance upon the foregoing authority prior to the delivery to Lessor of said written notice of said modification, rescission or revocation.

IN WITNESS WHEREOF:

By: _____

Name: Mona A. Allen

Title: Clerk of the Board
(Clerk or Secretary)

Date: _____

Subscribed to and sworn before me:

Notary Public: _____
(Name)

Date: _____

My commission expires: _____



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed 2018 Comprehensive Annual Financial Report and 2018 Actuarial Valuation from Kern County Employees’ Retirement Association (KCERA)

Recommended Action: Receive and File

Summary:

At its December 2018 meeting, the Board of Retirement approved KCERA’s Comprehensive Annual Financial Report (CAFR) and its Actuarial Valuation for the fiscal year ended June 30, 2018. KCERA has requested that both enclosed reports be placed on your Board’s consent agenda.

The CAFR provides insight into the retirement association. The report is divided into introductory, financial, investment, actuarial and statistical sections. Additionally, actuarial valuations include information about future employer and employee contribution rates, capital market assumptions, plan experience changes and other plan information that your district board might find useful in its budgetary planning.

The actuarial valuation, prepared by The Segal Group, includes information about future employer and employee contribution rates, capital market assumptions, plan experience changes and other plan information. The actuary determined the contribution rates necessary to fully fund the plan over the amortization periods specified in KCERA’s funding policy.

On February 5, 2019, the Kern County Board of Supervisors adopted the employer and employee contribution rates for the retirement system for FY 2019-20, as recommended by KCERA and The Segal Group in the actuarial valuation.

Of note in the reports provided, the Authority’s membership in KCERA grew from 1,374 in 2017 to 1,446 in 2018. Employer contribution rates will change effective July 2019 as follows:

	2018/19 Contribution Rate	2019/20 Contribution Rate
Tier I	44.76%	45.12%
Tier IIA	32.09%	32.62%
Tier IIB	31.34%	31.93%

Based on the updated contribution rates, the fiscal impact to Kern Medical is expected to be in the range of an additional \$1,500,000 to \$1,750,000 per year.

Therefore, IT IS RECOMMENDED that your Board receive and file the reports.

Executive Team

Dominic D. Brown, CPA, CFE
Executive Director

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
General Counsel

Matthew Henry, CFE
Assistant Executive Director

**KERN COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**



Board of Retirement

Jordan Kaufman, Chair
Rick Kratt, Vice-Chair
David Couch
Dustin Dodgin
Phil Franey
Juan Gonzalez
Marko Horvat
Bob Jefferson
Lauren Skidmore
Devin Simmons, Alternate

January 22, 2019

Subject: 2018 Comprehensive Annual Financial Report and 2018 Actuarial Valuation

Dear Plan Sponsor Executive:

The Board of Retirement approved KCERA's Comprehensive Annual Financial Report (CAFR) at its January 2019 meeting and approved the Actuarial Valuation at its December 2018 meeting, both for the fiscal year ended June 30, 2018. I am requesting that both enclosed reports be placed on the consent agenda of your next district board meeting.

KCERA's CAFR provides extensive financial insight into KCERA. The report is divided into introductory, financial, investment, actuarial and statistical sections. Additionally, actuarial valuations include information about future employer and employee contribution rates, capital market assumptions, plan experience changes and other plan information that your district board might find useful in its budgetary planning.

The Segal Group, Inc. (Segal), will be providing a presentation on the actuarial valuation to the Kern County Board of Supervisors on February 5, 2019 morning agenda. KCERA would like to invite all Sponsors to come to the presentation or to view it through the County's website or the Kern Government Television page on Youtube.

Please contact me with any questions you may have about KCERA's CAFR or Actuarial Valuation.

Sincerely,

Dominic D. Brown
Executive Director

enclosures



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

Copies of the following reports are available for review in Administration at 1700 Mount Vernon Avenue:

1. KCERA Comprehensive Annual Financial Report – Fiscal Years Ended June 30, 2018 and 2017
2. KCERA Actuarial Valuation and Review as of June 30, 2018



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed acceptance of donations of travel and related expenses from CSAC and Safety National for CHA “Hospital Compliance Seminar”

Recommended Action: Approve; Adopt Resolution

Summary:

The Authority’s conflict of interest policy prohibits employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment.

CSAC is the provider of primary and excess insurance coverage to the Authority; Safety National covers the Authority’s workers’ compensation program. Both CSAC and Safety National, through their respective risk funds, have offered to donate to the Authority all travel and related expenses for two Kern Medical employees to attend the California Hospital Association “Hospital Compliance Seminar” in Costa Mesa, California, on February 20, 2019.

Kern Medical recommends your Board adopt the attached proposed resolution to accept the travel donations from CSAC and Safety National for registration, travel and related expenses and authorize the Chief Executive Officer to designate two employees to attend this important conference.

**BEFORE THE BOARD OF GOVERNORS
OF THE KERN COUNTY HOSPITAL AUTHORITY**

In the matter of:

Resolution No. 2019-____

**ACCEPTANCE OF DONATION OF
TRAVEL AND RELATED EXPENSES
FROM CSAC AND SAFETY NATIONAL
FOR HOSPITAL COMPLIANCE SEMINAR**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 20th day of February, 2019, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The conflict of interest policy for the Kern County Hospital Authority (“Authority”) prohibits Authority employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment; and

- (b) CSAC provides primary and excess coverage to the Authority; and
- (c) Safety National provides coverage for the workers' compensation program;
and
- (d) CSAC and Safety National, through their respective risk funds, have offered to donate to the Authority all travel and related expenses for two Authority employees to attend the California Hospital Association "Hospital Compliance Seminar" in Costa Mesa, California, on February 20, 2019; and
- (e) The training session is necessary in connection with official Authority business; and
- (f) The Authority desires to obtain the donation of travel and related expenses to the Authority and will retain full control over the use of the donation; and
- (g) Neither CSAC nor Safety National has made any restrictions as to how the donation may be used.

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Governors of the Kern County Hospital Authority, as follows:

1. This Board finds the facts recited herein are true, and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.
2. This Board hereby accepts from CSAC and Safety National the donation of travel and related expenses to cover all costs for two Authority employees to travel to Costa Mesa, California, to attend the California Hospital Association "Hospital Compliance Seminar" on February 20, 2019.
3. This Board authorizes the Chief Executive Officer to designate two Authority employees to attend the California Hospital Association "Hospital Compliance Seminar" in Costa Mesa, California, on February 20, 2019.
4. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Chief Financial Officer
Legal Services Department
Human Resources Department



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed acceptance of donations of travel and related expenses from CSAC and Safety National for ASHRM “2019 ASHRM Academy”

Recommended Action: Approve; Adopt Resolution

Summary:

The Authority’s conflict of interest policy prohibits employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment.

CSAC is the provider of primary and excess insurance coverage to the Authority; Safety National covers the Authority’s workers’ compensation program. Both CSAC and Safety National, through their respective risk funds, have offered to donate to the Authority all travel and related expenses for one Kern Medical employee to attend the American Society for Health Care Risk Management “2019 ASHRM Academy” in Phoenix, Arizona, from April 1-2, 2019.

Kern Medical recommends your Board adopt the attached proposed resolution to accept the travel donations from CSAC and Safety National for registration, travel and related expenses and authorize the Chief Executive Officer to designate one employee to attend this important conference.

**BEFORE THE BOARD OF GOVERNORS
OF THE KERN COUNTY HOSPITAL AUTHORITY**

In the matter of:

Resolution No. 2019-____

**ACCEPTANCE OF DONATION OF
TRAVEL AND RELATED EXPENSES
FROM CSAC AND SAFETY NATIONAL
FOR 2019 ASHRM ACADEMY**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 20th day of February, 2019, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The conflict of interest policy for the Kern County Hospital Authority (“Authority”) prohibits Authority employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment; and

- (b) CSAC provides primary and excess coverage to the Authority; and
- (c) Safety National provides coverage for the workers' compensation program;
and
- (d) CSAC and Safety National, through their respective risk funds, have offered to donate to the Authority all travel and related expenses for one Authority employee to attend the American Society for Health Care Risk Management "2019 ASHRM Academy" in Phoenix, Arizona, from April 1-2, 2019; and
- (e) The training session is necessary in connection with official Authority business; and
- (f) The Authority desires to obtain the donation of travel and related expenses to the Authority and will retain full control over the use of the donation; and
- (g) Neither CSAC nor Safety National has made any restrictions as to how the donation may be used.

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Governors of the Kern County Hospital Authority, as follows:

1. This Board finds the facts recited herein are true, and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.
2. This Board hereby accepts from CSAC and Safety National the donation of travel and related expenses to cover all costs for one Authority employee to travel to Phoenix, Arizona, to attend the American Society for Health Care Risk Management "2019 ASHRM Academy" from April 1-2, 2019.
3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend the American Society for Health Care Risk Management "2019 ASHRM Academy" in Phoenix, Arizona, from April 1-2, 2019.
4. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Chief Financial Officer
Legal Services Department
Human Resources Department



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Request to employ retired Kern County Hospital Authority employee Tina Anderson

Recommended Action: Approve

Summary:

Kern Medical is requesting approval to employ retired Kern County Hospital Authority employee Tina Anderson, as Extra Help Senior Paralegal, for the period ending June 30, 2019, or 960 hours, whichever occurs first, effective March 1, 2019.

The Public Employee Pension Reform Act (PEPRA) sets forth post-retirement employment requirements for all retirees receiving a pension benefit from a public retirement system who returns to work for a public employer. The Authority is a designated public employer for purposes of KCERA. Under PEPRA service requirements, a retiree may be reemployed up to a maximum of 960 hours per fiscal year, subject to approval by your Board.

In addition to the service requirements, Ms. Anderson is also subject to the employment requirements under PEPRA, which provide that a retired public employee is not eligible for post-retirement employment for a period of 180 days following the date of retirement, unless the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by your Board. The requested appointment may not be placed on the consent agenda.

Ms. Anderson retired effective February 2, 2019. Ms. Anderson has worked at Kern Medical for 10 years, as a senior paralegal, supporting the attorneys who advise Kern Medical and the Authority and has the requisite experience and skill set needed to perform the work for which she is being reemployed. Kern Medical has an urgent need to reemploy Ms. Anderson immediately to ensure the ongoing implementation of the new contract tracking database and the drafting and processing of over 100 resident physicians contracts prior to the new academic year. Ms. Anderson was the only paralegal employed by Kern Medical. She brings an in-depth knowledge of the current archaic contract management system and how currently contracts are being processed at Kern Medical and it is critically important that the hundreds of contracts be migrated successfully to the new system in order to protect the data and allow the data to be effectively stored and retrieved. Kern Medical staff, at multiple levels, rely on the accuracy of its contracts system for when contracts expire, need to be renewed, contract terms need to be reviewed for compliance, etc. Due to Ms. Anderson's intimate acquaintance with the functions of the Legal Services Department, she will be able to provide services immediately without any training. Ms. Anderson will be reemployed for a limited duration to fill a critical need, while Kern Medical recruits a replacement for her recently vacated position.

Therefore, it is recommended that your Board approve the reemployment of Tina Anderson, as Extra Help Senior Paralegal, effective March 1, 2019.



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed Report of Independent Auditors from Moss-Adams, LLP

Recommended Action: Receive and File; Refer to Kern County Board of Supervisors

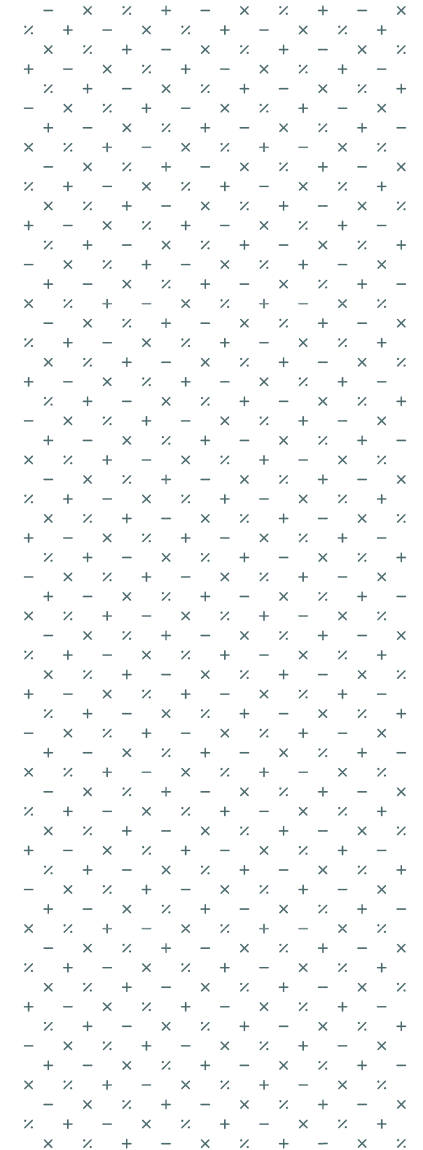
Summary:

Kern Medical requests your Board receive and file the Report of Independent Auditors from Moss-Adams, LLP, for the audit of Kern Medical's financial statements pursuant to Kern County Hospital Authority Agreement No. 069-2018. The scope of the audit includes the audit of Kern Medical financial statements, which comprise the statement of net position as of June 30, 2018, and the related statements of revenue, expenses and changes in net position, and cash flows for the year then ended, and the related notes to the financial statements.



2018 Audit Results: Kern County Hospital Authority

February 20, 2019



Board of Governors

Kern County Hospital Authority



Dear Board of Governors:

Thank you for your continued engagement of Moss Adams LLP. We are pleased to have the opportunity to meet with you to discuss the results of our audit of the financial statements of Kern County Hospital Authority (“Kern Medical”) for the year ended June 30, 2018.

The accompanying report, which is intended solely for the use of the Board of Governors and management, presents important information regarding the Kern County Hospital Authority financial statements and our audit that we believe will be of interest to you. It is not intended and should not be used by anyone other than these specified parties.

We conducted our audit with the objectivity and independence that you expect. We received the full support and assistance of the Kern County Hospital Authority personnel. We are pleased to serve and be associated with the Kern County Hospital Authority as its independent public accountants and look forward to our continued relationship.

We look forward to discussing our report or any other matters of interest with you during this meeting.

Agenda

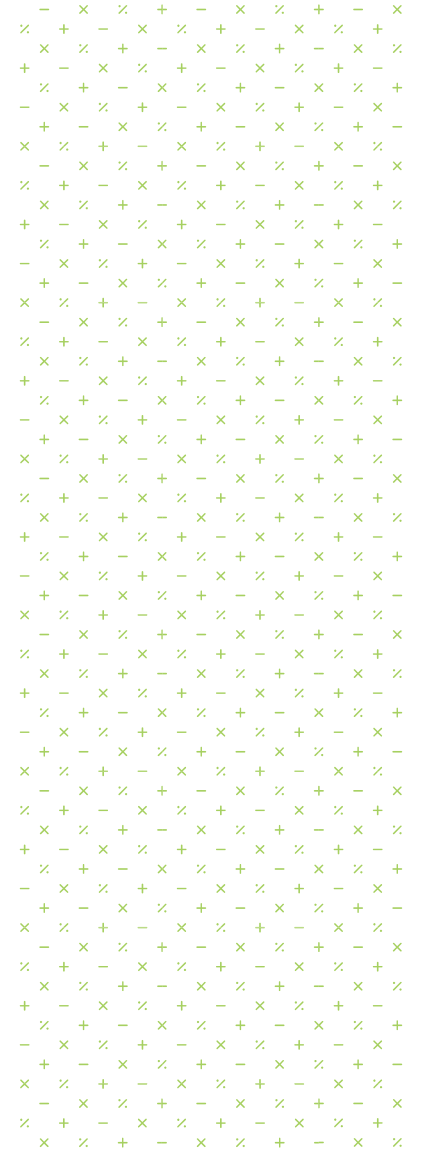
- Auditor Opinion and Reports
- Communication with Those Charged with Governance
- Exhibit: Management Representation Letter
- Other Information





Auditor Opinion & Reports

Better Together: Moss Adams & Kern County Hospital Authority



Scope of Services

We have performed the following services for Kern Medical:

- Annual financial statement audit for the year ending June 30, 2018.

We have also performed the following non-attest services:

- Assisted in the drafting of the financial statements of Kern Medical, excluding Management's Discussion and Analysis.



Auditor Report on the Financial Statements

Unmodified Opinion

- Financial statements are presented fairly and in accordance with U.S. GAAP.



Other Auditor Reports

GAGAS Report on *Internal Control Over Financial Reporting* and on *Compliance and Other Matters*

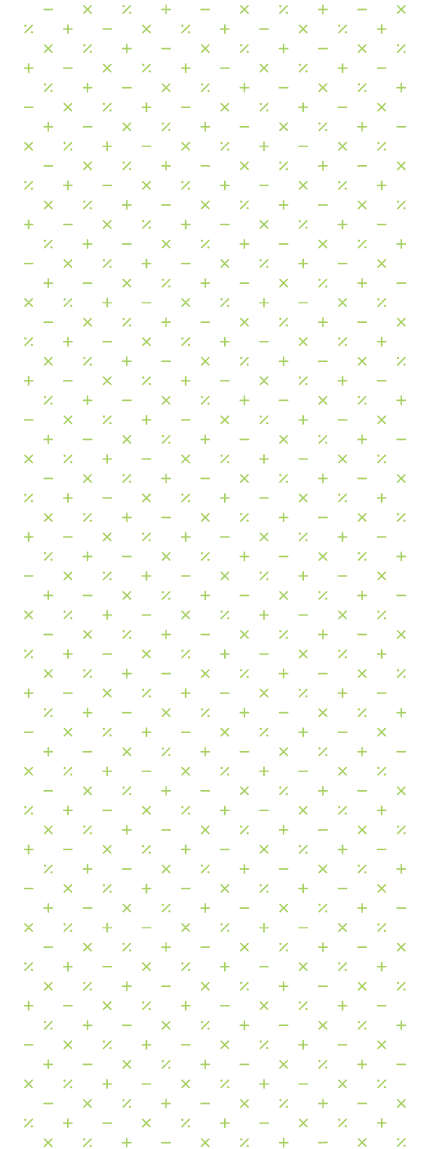
- Material weakness:
 - Finding 2018-02: Indigent Funding Accounting Process
- Significant deficiency:
 - Finding 2018-01: Journal Entry Process





Communication with Those Charged with Governance

Better Together: Moss Adams & Kern County Hospital Authority



Our Responsibility

Our responsibility under U.S. Generally Accepted Auditing Standards and Government Auditing Standards

1

To express our opinion on whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, and in accordance with U.S. GAAP. However, our audit does not relieve you or management of your responsibilities.

2

To perform an audit in accordance with generally accepted auditing standards issued by the AICPA, Government Auditing Standards issued by the Comptroller General of the United States, and the California (CA) Code of Regulations, Title 2, Section 1131.2, State Controller's *Minimum Audit Requirements for CA Special Districts*, and design the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement.

3

To consider internal control over financial reporting and internal control over compliance as a basis for designing audit procedures but not for the purpose of expressing an opinion on its effectiveness or to provide assurance concerning such internal control.

4

To communicate findings that, in our judgment, are relevant to your responsibilities in overseeing the financial reporting. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.



Planned Scope & Timing of the Audit

It is the auditor's responsibility to determine the overall audit strategy and the audit plan, including the nature, timing and extent of procedures necessary to obtain sufficient and appropriate audit evidence and to communicate with those charged with governance and overview of the planned scope and timing of the audit.

OUR COMMENTS

- The planned scope and timing of the audit was communicated to Kern Medical's Board of Governors in our audit planning letter and was included in the engagement letter for the year ended June 30, 2018.



Significant Accounting Policies & Unusual Transactions



11

The auditor should determine that the Board of Governors is informed about the initial selection of and changes in significant accounting policies or their application. The auditor should also determine that the Board of Governors is informed about the methods used to account for significant unusual transactions and the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

OUR COMMENTS

- Management has the responsibility for selection and use of appropriate accounting policies. The significant accounting policies used by Kern Medical are described in the footnotes to the financial statements. Throughout the course of an audit, we review changes, if any, to significant accounting policies or their application, and the initial selection and implementation of new policies. During the year, Kern Medical adopted GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pension*.
- There were no other changes to significant accounting policies for the year ended June 30, 2018.
- We believe management has selected and applied significant accounting policies appropriately and consistent with those of the prior year.

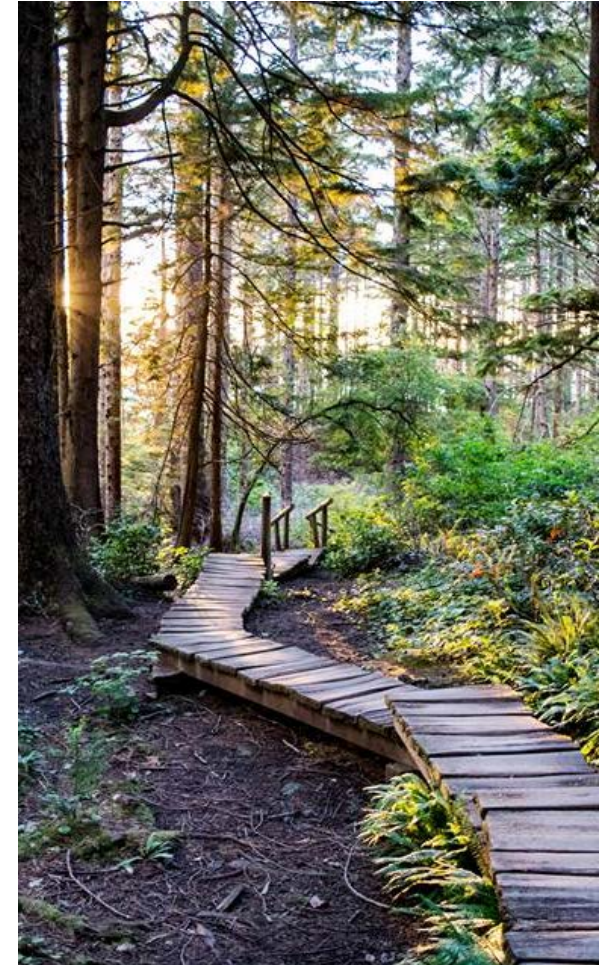
Areas of Audit Emphasis

- Patient Revenue/Receivables
- Valuation of Third Party Settlements, including Indigent Funding
- Pension and Other Post-Employment Benefits Obligations
- Self-Insured Risks – Professional Liability and Workers Compensation
- Related Party Transactions



Areas of Audit Emphasis: Patient Service Revenue and Accounts Receivable Allowances

- **Accounting Issue**
 - Revenue recognition and adequacy of contractual allowances and allowances for bad debts
- **Description of circumstance**
 - Revenue recognized when service provided
 - Receivables, primarily arising from third party payors
- **Audit risk**
 - Revenue recognition could be inappropriate
 - Reserve for contractual allowances are understated
- **Moss Adams audit response**
 - Testing of internal controls around the revenue process
 - Testing of management's estimate of allowances using underlying collection history
 - Lookback analysis and subsequent cash receipts analysis
- **Moss Adams audit results**
 - Revenue recognition is considered appropriate
 - Valuation of patient accounts receivable is appropriate
 - Refer to next slide for hindsight analysis



Patient Accounts Receivable Lookback Analysis

	2018	2017	2016	2015
Net Patient Accounts Receivable	\$43,128,667	\$39,712,617	\$27,033,032	\$29,757,971
Subsequent Cash Receipts 4 Months after 6/30	\$32,885,875	\$36,056,098	\$23,239,561	\$23,800,985
% Collected 4 Months after 6/30	76%	91%	86%	80%
Exposure after 4 Months Collections	\$10,242,792	\$3,656,519	\$3,793,471	\$5,956,986
Subsequent Cash Receipts 15 Months after 6/30	N/A	\$45,758,675	\$30,103,626	\$29,263,404
Cash Receipts in Excess of (Less Than) Amounts Recorded	N/A	\$6,046,058	\$3,070,594	(\$494,567)
Cash Receipts in Excess of (Less Than) Amounts Recorded (%)	N/A	15%	11%	-2%
Days in Patient Accounts Receivable	N/A	55	54	69



Areas of Audit Emphasis: Valuation of Third Party Settlements, including Indigent Funding

- **Accounting Issue**
 - Revenue recognition and adequacy of reserves
- **Description of circumstance**
 - Revenue recognized in accordance with the elements of the respective reimbursement program
 - Receivables or payables, arising from expected settlements with third party payors
- **Audit risk**
 - Revenue recognition could be inappropriate
 - Reserves are understated
- **Moss Adams audit response**
 - Testing of internal controls around the revenue process
 - Testing of management's estimate of reserves based on contractual reimbursement arrangements, historical settlements, latest available information from payors
 - Lookback analysis and subsequent cash receipts analysis
- **Moss Adams audit results**
 - Revenue recognition is considered appropriate based on available information
 - Valuation of third party settlements is appropriate, after consideration of adjustments
 - Control finding related to indigent funding revenue



Management Judgements & Accounting Estimates

The Board of Governors should be informed about the process used by management in formulating particularly sensitive accounting estimates and about the basics for the auditor's conclusions regarding the reasonableness of those estimates.

OUR COMMENTS

- Management's judgements and accounting estimates are based on knowledge and experience about past and current events and assumptions about future events. We apply audit procedures to management's estimates to ascertain whether the estimates are reasonable under the circumstances and do not materially misstate the financial statements.
- Significant management estimates impacted the financial statements including the following: **accounts receivable reserves; actuarially determined accruals for workers' compensation, professional liability, pension and other post-employment liabilities; and accruals for third party settlements.**
- We deem them to be reasonable.



Significant Audit Adjustments & Unadjusted Differences Considered by Management to Be Immaterial

The Board of Governors should be informed of all significant audit adjustments arising from the audit. Consideration should be given to whether an adjustment is indicative of a significant deficiency or a material weakness in Kern Medical's internal control over financial reporting, or in its process for reporting interim financial information, that could cause future financial statements to be materially misstated.

The Board of Governors should also be informed of uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements as a whole.

OUR COMMENTS

The following corrected audit adjustments were recorded:

- An adjustment of \$17,596,000 to increase Indigent Funding Revenues and decrease Due to Governmental Agencies for reserves no longer supported.
- An adjustment of \$9,801,000 to increase Indigent Funding Revenues and decrease Due to Governmental Agencies for true-ups related to updated information.
- An adjustment of \$15,538,000 to decrease Indigent Funding Revenues and increase Due to Governmental Agencies to true-up estimate related to Disproportionate Share Hospital program audit reserves.
- An adjustment of \$19,000,000 to increase Indigent Funding Revenues and decrease Due to Governmental Agencies to record revenue for Enhanced Payment Program.
- An adjustment of \$6,316,000 to increase Indigent Funding Revenues and decrease Due to Governmental Agencies to record revenue related to final settlement communicated subsequent to year-end.

Total of corrected audit adjustments: \$37,175,000, net income increase

Management proposed post-close adjustments: (\$12,749,000), net income decrease

Total impact of all post-close adjustments: \$24,426,000, net income increase



Significant Audit Adjustments & Unadjusted Differences Considered by Management to Be Immaterial (continued)

The Board of Governors should be informed of all significant audit adjustments arising from the audit. Consideration should be given to whether an adjustment is indicative of a significant deficiency or a material weakness in Kern Medical's internal control over financial reporting, or in its process for reporting interim financial information, that could cause future financial statements to be materially misstated.

The Board of Governors should also be informed of uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements as a whole.

OUR COMMENTS

There was one uncorrected adjustment:

- An adjustment of \$906,000 to increase Patient Accounts Receivable, \$12,000 to increase Patient Revenue, and \$918,000 to decrease Unrestricted Net Position related to the cut-off timing of recording patient charges.

We concur with management's assessment that the uncorrected adjustment is immaterial to the financial statements taken as a whole.



Potential Effect on the Financial Statements of Any Significant Risks & Exposures

The Board of Governors should be adequately informed of the potential effect on financial statements of significant risks and exposures and uncertainties that are disclosed in the financial statements.

OUR COMMENTS

- Kern Medical is subject to potential legal proceedings and claims that arise in the ordinary course of business, which are disclosed in the notes to the financial statements.



Difficulties Encountered in Performing the Audit

The Board of Governors should be informed of any significant difficulties encountered in dealing with management related to the performance of the audit, including disagreements with management, whether or not satisfactorily resolved, about matters that individually or in the aggregate could be significant to Kern Medical's financial statements, or the auditor's report.

OUR COMMENTS

- No significant difficulties were encountered during our audit.
- We are pleased to report that there were no disagreements with management.



Material Uncertainties Related to Events & Conditions/ Fraud & Noncompliance with Laws and Regulations

Any doubt regarding the entity's ability to continue, as a going concern, should be communicated to the Board of Governors.

Fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements should be communicated. We are also required to communicate any noncompliance with laws and regulations involving senior management that come to our attention, unless clearly inconsequential.

OUR COMMENTS

- No such matters came to our attention.
- We have not become aware of any instances of fraud or noncompliance with laws and regulations.



Other Material Written Communications

The Board of Governors should be informed of any significant difficulties encountered in dealing with management related to the performance of the audit, including disagreements with management, whether or not satisfactorily resolved, about matters that individually or in the aggregate could be significant to Kern Medical's financial statements, or the auditor's report.

OUR COMMENTS

- See Exhibit 1 for management representation letter.
- Other than the engagement letter, management representation letter, and communication to those charged with governance, there have been no other significant communications.



Management's Consultation with Other Accountants

In some cases, management may decide to consult about auditing and accounting matters. If management has consulted with other accountants about an auditing and accounting matter that involves application of an accounting principle to Kern Medical's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts.

OUR COMMENTS

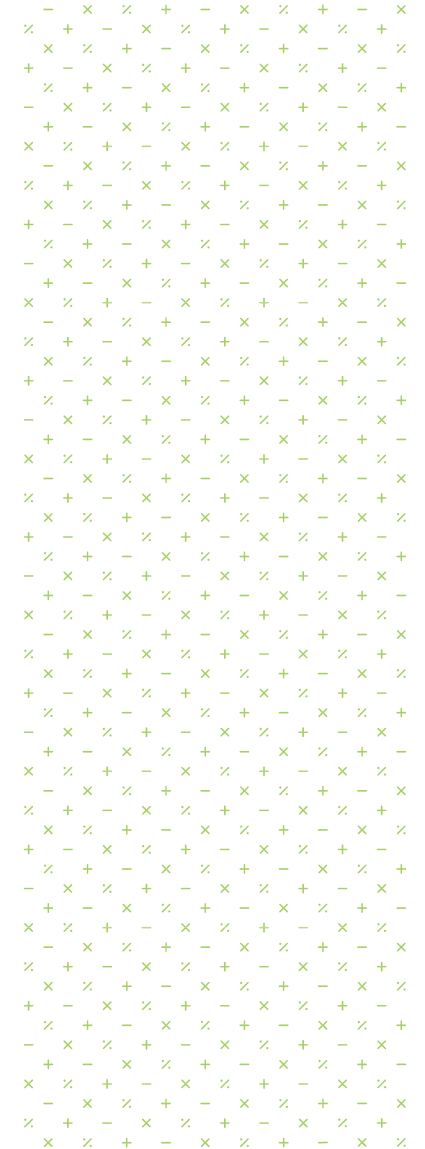
- We are not aware of any significant accounting or auditing matters for which management consulted other accountants.





Management Representation Letter

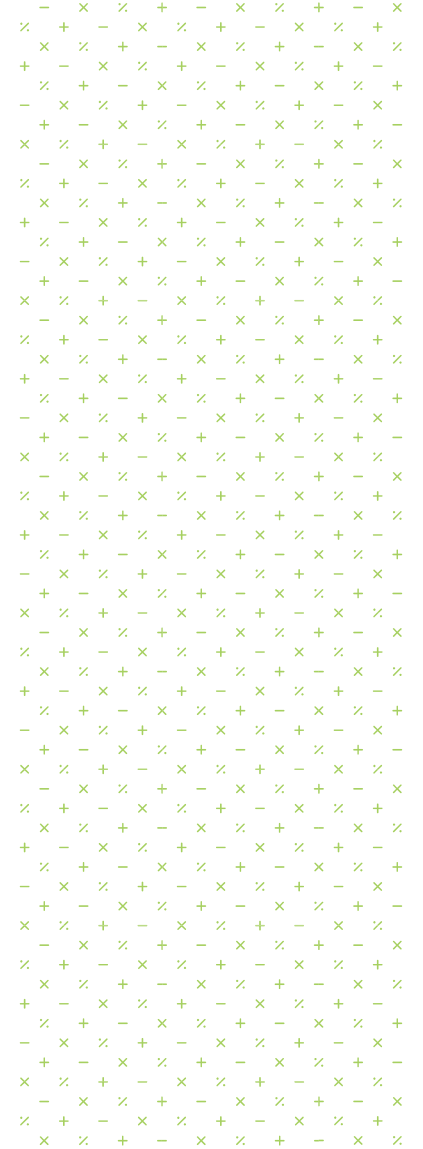
Exhibit 1





Industry Focus

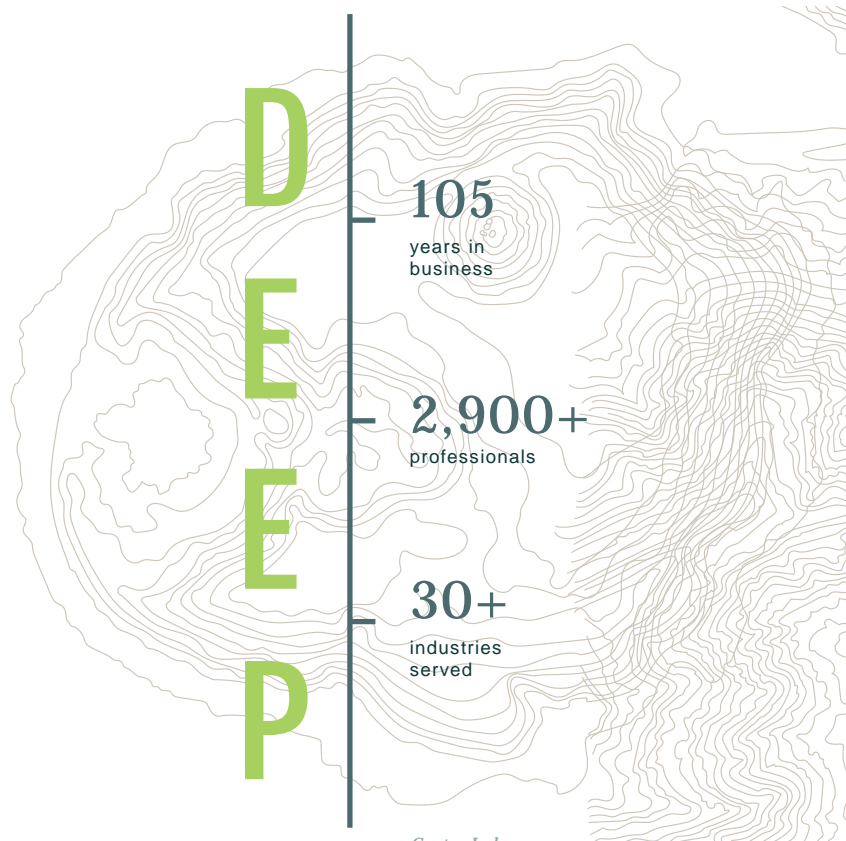
Better Together: Moss Adams & Kern County Hospital Authority



Expertise

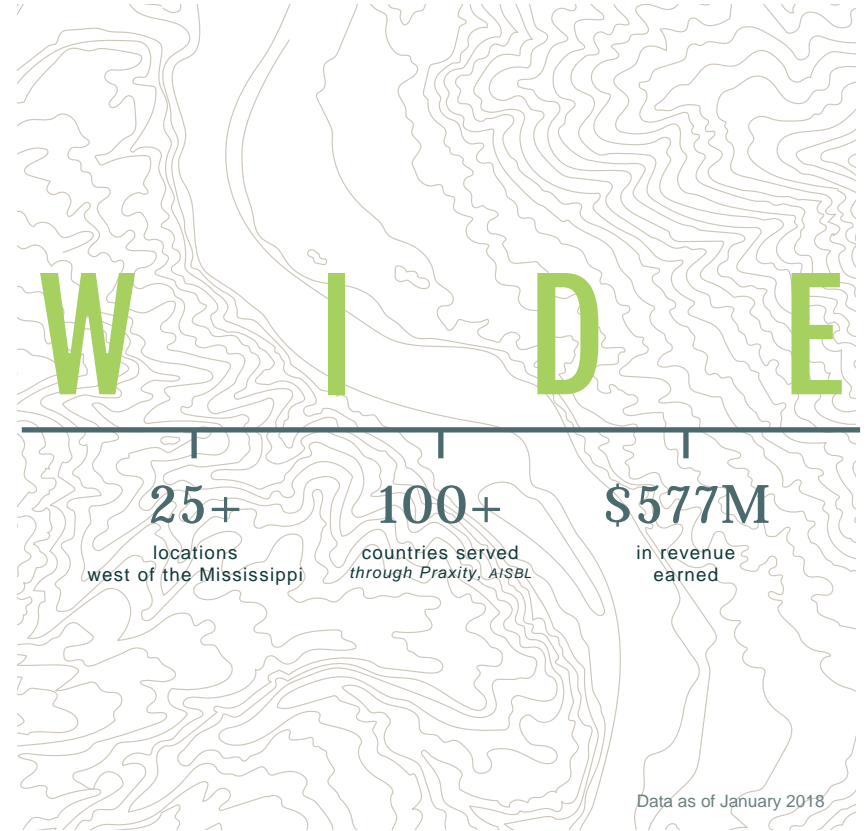


26



*Crater Lake—
A monument to perseverance, North America's deepest lake filled to 1,949 feet over 720 years.*

Reach



Data as of January 2018

*Grand Canyon—
At 277 miles long and up to 18 miles wide, this icon serves as a testament to determination and time.*

National Health Care Practice

Increased federal and state regulations and shifting patient populations create an opportunity for fresh perspectives and novel approaches to effectively operating in the marketplace. Solve your most complex challenges by engaging a team that understands the unique obstacles you face, backed by decades of experience in health care.

Health care is one of the firm's largest practice areas, and we've built a strong team of 250 professionals who provide industry-related accounting, auditing, and consulting services to over 2,400 clients that span the health care continuum.

We provide solutions, not just services, and will keep you up to date with industry changes.

Industry Expertise

D

E

E

P

250

health care professionals

30

health care partners

2,400+

clients nationwide

Leadership involvement with AICPA Health Care Expert Panel and HFMA National Principles and Practice Board

Participation in 30+ national, regional, and state health care industry events

*Crater Lake—
A monument to perseverance,
North America's deepest lake filled to 1,949 feet over 720 years.*

Data as of March 2017

Hospitals & Health Systems

Moss Adams has a dedicated Hospitals Practice serving more than 380 hospitals and hospital systems, ranging in size from 15 to over 1,000 beds, across the nation. Our work extends well beyond traditional accounting services and includes consulting and assistance on an array of issues in health care financial management.

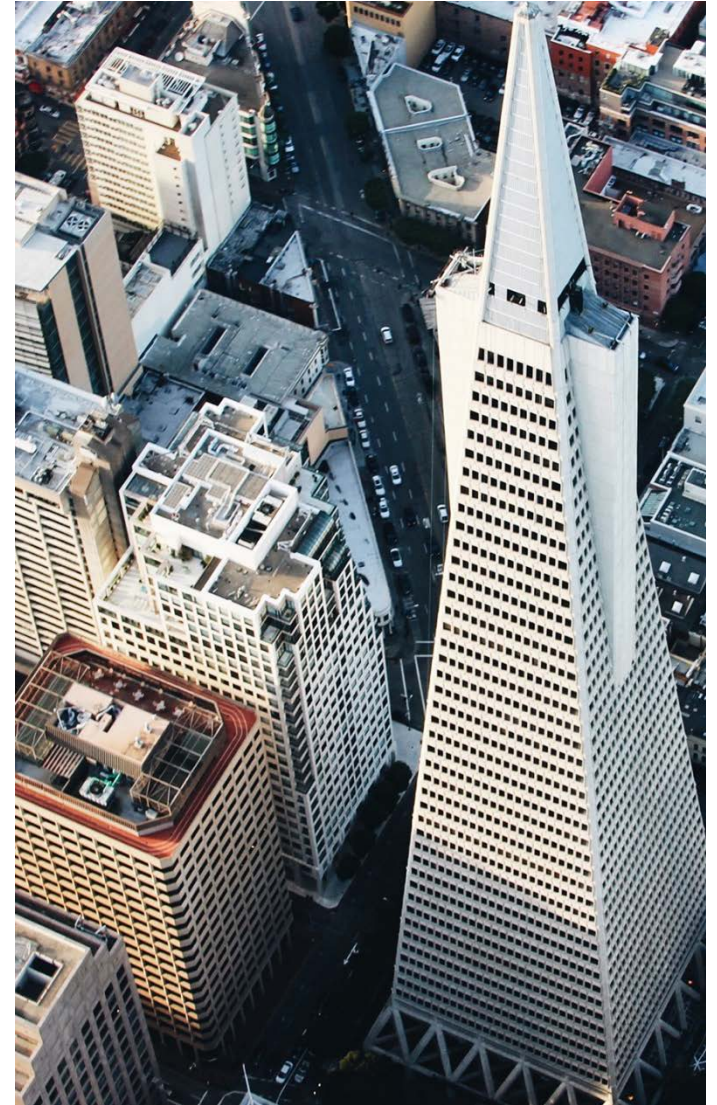
We leverage our deep knowledge of the national marketplace and local competitive environments to provide customized solutions that make a difference to your organization.

Who we serve:



28

- Integrated health systems
- Tertiary care teaching hospitals
- Hospital districts
- University-based hospitals
- Community and sole community hospitals
- Critical access hospitals
- Pediatric hospitals
- For-profit and not-for-profit organizations



Additional Services

Audit and tax are vital. But you have complex needs that go beyond these core functions. Our dedicated health care consulting team provides a range of services to address all your needs—both now and in the future.

Health Care Consulting		
COST REIMBURSEMENT	GOVERNMENT COMPLIANCE	OPERATIONAL IMPROVEMENT
Medicare & Medicaid	Regulatory Compliance	Revenue Cycle Enhancement
Provider-based Licensure & Certification	Coding Validation	Claims Recovery
Medical Education	Coding Department Redesign	Litigation Support
Uncompensated Care	EHR Internal Controls	Employer Health Benefits
	Corporate Compliance	Lean Consulting
STRATEGY & INTEGRATION	INFORMATION TECHNOLOGY	
Provider Risk Analysis, Contracting & Operational Design	HIPAA Security and Privacy	
M&A Support	Network Security & Penetration Testing	
Feasibility Studies	HITRUST Assessment & Certification	
Market Intelligence & Benchmarking	SOC Pre-Audit Gap Analysis & Readiness	
Service Line Enhancement	SOC Audits	
Strategic Planning & Implementation		



Information Technology

Moss Adams has a dedicated team of professionals who possess extensive technology backgrounds, with particular expertise in the health care industry. Our industry experience includes relevant technologies, leading practice management systems, current market trends, and security issues, including HIPAA standards.

What we offer:

- Technology assessments
- IT strategy, including package, stand-alone, and ROI validation and review
- Enterprise solutions architecture, including technology, business process, and implementation rollout
- Cost containment
- System implementation
- Quality assurance reviews
- Process improvement and operational reviews
- HIPAA risk assessments
- Security and privacy
- Disaster recovery planning



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Transaction Services

Real Estate Consulting

- Strategic planning at enterprise, entity and asset level
- Restructuring at enterprise, portfolio and asset level
- Recapitalization/capital markets (equity and debt)

*Valuations**

- Business valuation services
- Tangible/intangible asset valuation services
- Stock compensation analyses
- Earn out/incentive structures
- Wealth transfer
- Charitable contribution analysis
- Purchase price allocation
- Impairment analyses

Benefit Plans

- Exposure assessment
- Benefit program analyses
- Comparability studies
- Development of severance plans
- Employee retention programs

Financial Due Diligence

- Assessment of recurring earnings
- Analysis of key revenue and cost drivers
- GAAP/cash accounting differences
- Critique of balance sheet exposures
- Input on closing deal structure
- Assess operating working capital needs

Transaction Tax

- Federal, state, and international tax risk analyses
- Customs, duties, VAT, and other indirect tax assessments
- Evaluation of significant tax exposures
- Assessment of optimal transaction structure
- Identification of post-transaction tax minimization options

** Services are generally restricted and not allowed for audit clients.*

IT and Integration

- IT platform, cost and scalability analyses
- Operations review and strategies
- Investments analysis
- Synergies analysis and investment requirements
- Assess impact to forecast assessment of integration challenges, risks, and resolution strategies
- Organization design and governance issues
- Communication plan and change management

Business Risk Management

- SOX 404 implementation, optimization and testing
- Internal audit outsourcing and co-sourcing
- Enterprise risk management consulting
- Royalty and collaboration agreement audits
- IT audits
- Business process design

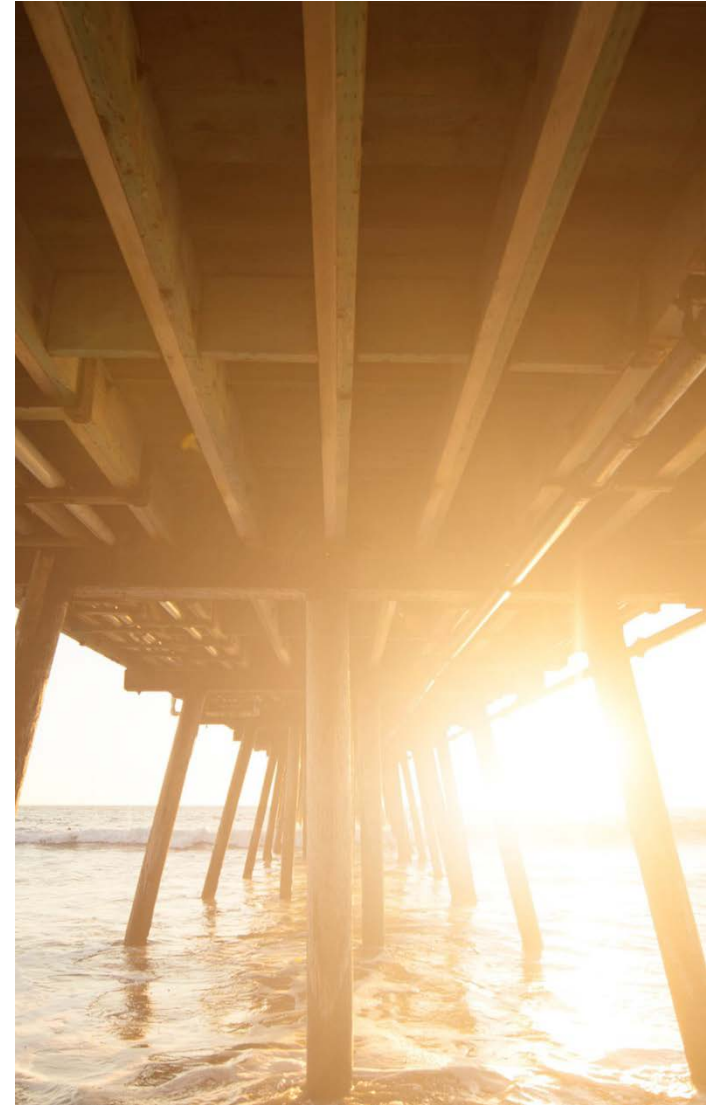


Government Compliance

Navigating the ins and outs of government compliance takes a trained eye. We work closely with you to help identify areas of improvement, correct billing errors, and prevent future oversights.

Services Include:

- Regulatory compliance
- Compliance gap assessment
- Coding validation
- Coding department redesign
- EHR internal controls



Strategic & Integration Consulting

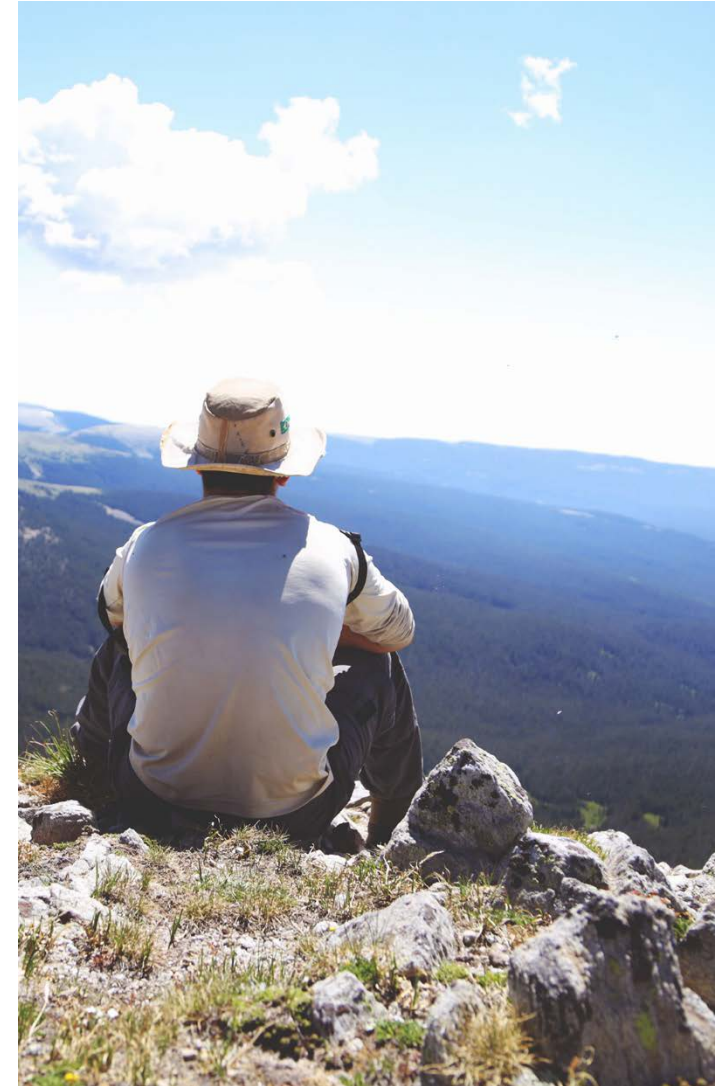
Our health care consultants are dedicated to helping you gain efficiency, streamline operations, and find opportunity in a time of rapid industry upheaval. We focus on:

Services include:

- Strategic planning and implementation
- Business intelligence through data analytics
- Provider risk analysis, contracting, and operational design
- Market intelligence and benchmarking
- Service line enhancement
- Feasibility studies and analysis
- Managed care assessment and negotiation
- M&A support
- Financial modeling



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Internal Audit Solutions

We offer a custom, risk-based approach to helping you achieve the desired level of assurance, achieve your organization's goals, and reduce your compliance costs. Moss Adams works with clients on a wide range spectrum of internal audit capabilities—from organizations with deep and wide internal audit departments to those with no staff at all.

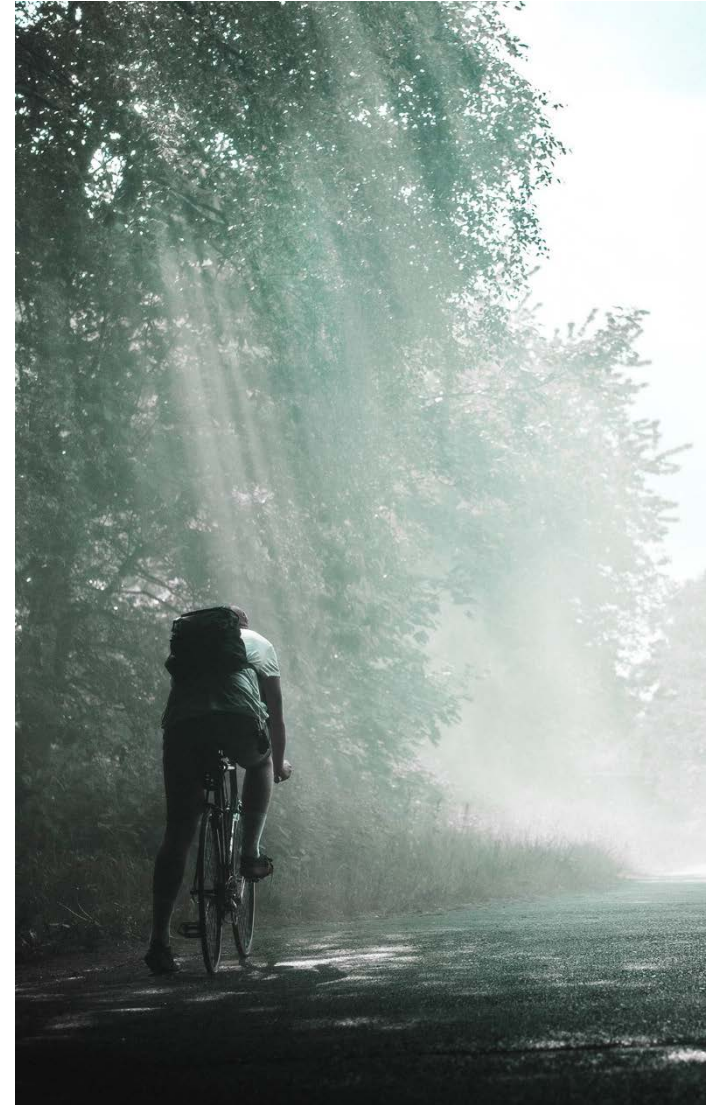
We're trusted advisors to management and boards. External auditors can be confident in our work and its results.

Working with you, we can address such challenges as:

- Audit committee expectations
- Internal control problems
- Staff augmentation
- Inefficient business processes, costly or wasteful practices
- High fixed internal audit costs
- Unfulfilled internal audit needs
- Insufficient coverage of IT and tax
- Compliance failures



34



Lean Consulting

Our certified lean professionals assist in transforming organizations in implementing a lean management system through educating, training and coaching executives, managers, clinicians and frontline staff.

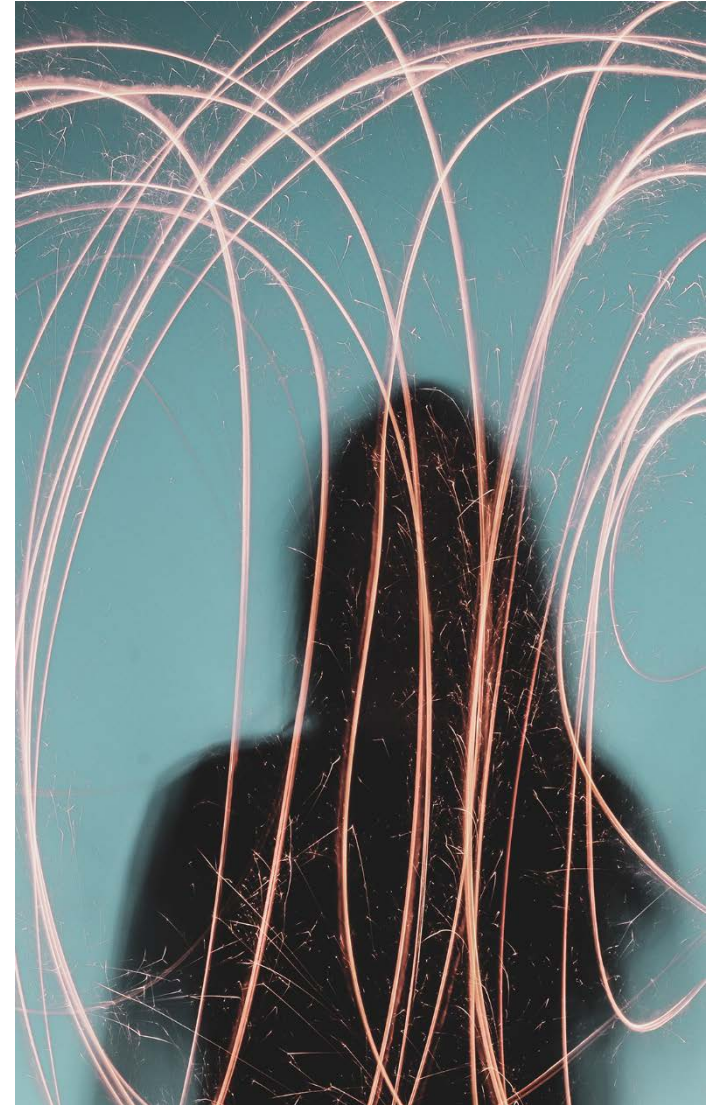
We are committed to helping organizations achieve the highest quality through zero defects, increased patient satisfaction, empowerment of staff, and improvement of financial performance through the application of the Toyota Management System. Improvement work ranges from the strategic planning process at the top of the organization to complex clinical processes within care delivery and the supporting administrative processes.



Main practice areas include:

- 3P+ innovation
- Lean management systems and hoshin
- Lean operations
- Quality and patient safety

35



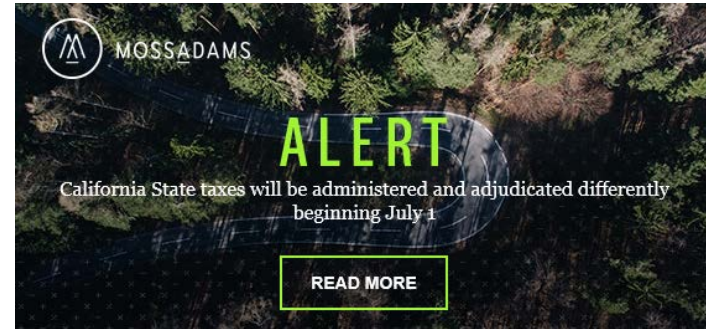
Insights & Resources

36

In today's fast-paced world, we know how precious your time is. We also know that knowledge is key. These resources offer what you need to know, when you need to know it, and is presented in the format that fits your life. We'll keep you informed to help you stay abreast of critical industry issues.

Moss Adams closely monitors regulatory agencies, participates in industry and technical forums, and writes about a wide range of relevant accounting, tax, and business issues to keep you informed.

We also offer CPE webinars and events which are archived and available on demand, allowing you to watch them on your schedule.



ALERT

California State taxes will be administered and adjudicated differently beginning July 1

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INSIGHT

Is your data secure? Avoid a significant data breach by implementing best practices with the HITRUST CSF.

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WEBCAST

Boost Compliance with System and Organization Controls

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In today's fast-paced world, we know how precious your time is. We also know that knowledge is key. These resources offer what you need to know, when you need to know it, and is presented in the format that fits your life.



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THANK
YOU



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed establishment of a treasury outside the Kern County Treasury Pool, effective March 1, 2019; approval of a revolving line of credit with PNC Bank, National Association (PNC Bank) in a principal amount not to exceed \$20,000,000 from March 1, 2019 through June 30, 2019, \$50,000,000 from July 1, 2019 through October 31, 2019, and \$20,000,000 at any other time; approval of Credit Agreement, General Security and Pledge Agreement, and Deposit Account Control Agreements with PNC Bank; and delegating authority to certain officers

Recommended Action: Approve; Adopt Resolution; authorize and direct any two of the following officers (each, an "Authorized Officer"), for and in the name of and on behalf of the Authority, to execute the Credit Agreement, the General Security and Pledge Agreement, and each of the Deposit Account Control Agreements, substantially in the form presented to your Board, with such changes as the Authorized Officers executing the same, together with the Vice President & General Counsel of the Authority, shall approve: Chairman of this Board, Vice-Chairman of this Board, Chief Executive Officer of the Authority, Chief Strategy Officer of the Authority or Chief Financial Officer of the Authority; refer to Kern County Board of Supervisors with request to authorize the Kern County Hospital Authority to establish its own treasury, separate and apart from the Kern County Treasury Pool, and incur debt, effective March 1, 2019

Summary: Kern Medical requests your Board to approve the following:

1. Establishment of a treasury outside the Kern County Treasury Pool, effective March 1, 2019;
2. Approval of a revolving line of credit with PNC Bank, National Association (PNC Bank) in a principal amount not to exceed \$20,000,000 from March 1, 2019 through June 30, 2019, \$50,000,000 from July 1, 2019 through October 31, 2019, and \$20,000,000 at any other time;
3. Approval of Credit Agreement, General Security and Pledge Agreement, and Deposit Account Control Agreements with PNC Bank; and
4. Delegation of authority to certain officers.

The proposed revolving line of credit with PNC Bank is for a term of two years. PNC Bank security will be in the form of a first lien on all Gross Receivables and a pledge and security interest in the Accounts Receivable Collection Accounts. Line of Credit costs include the following: unused fee - .25% of commitment amount; draw fee - LIBOR + 0.90% (current rate of 3.41%); and supplemental fee if treasury services are not implemented. Key covenants included are debt service coverage ratio of at least 1.2x; limit of \$10,000,000 additional debt before bank consent is needed; quarterly financials and utilization statistics; external audit report and other representations, warranties and events of default. The agreements include the transition of the Authority's treasury function from the County of Kern to PNC Bank with the intent to establish a long-term strategic capital partner that will provide other forms of credit in the future as well as investment banking services. The enabling ordinance requires the Authority to obtain approval from the Kern County Board of Supervisors for the Authority to establish its own treasury outside of the county Treasury Pool and the incurrence of the debt contemplated by this transaction.

Therefore, it is recommended that your Board approve the above-referenced recommended action.

Owned and Operated by the Kern County Hospital Authority
A Designated Public Hospital

1700 Mount Vernon Avenue | Bakersfield, CA 93306 | (661) 326-2000 | KernMedical.com

**BEFORE THE BOARD OF GOVERNORS
OF THE KERN COUNTY HOSPITAL AUTHORITY**

In the matter of:

Resolution No. 2019-_____

**APPROVING THE ESTABLISHMENT OF A
TREASURY OUTSIDE OF THE KERN COUNTY
TREASURY POOL, APPROVING A REVOLVING
LINE OF CREDIT AND DELEGATING
AUTHORITY TO CERTAIN OFFICERS**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 20th day of February, 2019, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The County of Kern (the "County"), by action of its Board of Supervisors (the "Board of Supervisors") and pursuant to Chapter 5.5 (commencing with Section 101852) of Part 4 of Division 101 of the California Health and Safety Code (the "Act"), enacted Ordinance A-356 on October 6, 2015, effective November 6, 2015, which Ordinance is codified as Chapter 2.170 of the County Code of Ordinances (such Chapter 2.170, as amended from time to time, the "Enabling Ordinance");

(b) The Enabling Ordinance established the Kern County Hospital Authority (the “Authority”) and authorized the transfer of substantially all of the assets of Kern Medical Center and related health care resources from the County to the Authority, subject to certain terms and conditions, on July 1, 2016;

(c) The Authority is a local unit of government separate and apart from the County and any other public entity, as provided by the Act, and is not an agency, division, or department of the County or any other public entity;

(d) The Enabling Ordinance directs that the Authority shall operate pursuant to the provisions of the Act, the Enabling Ordinance and other provisions of law, and in accordance with the Bylaws for Governance adopted by the Board of Supervisors and the formal written agreements between the County and the Authority;

(e) In order to provide for certain financial relationships between the County and the Authority, the County and the Authority entered into that certain Agreement for Health Care Services, Finance and Support, dated as of July 1, 2016 (the “Finance and Support Agreement”);

(f) The Finance and Support Agreement provides that the Authority shall participate in the County Treasury (the “Treasury Pool”) unless and until the Board of Supervisors authorizes the Authority to establish its own treasury;

(g) The Enabling Ordinance provides that the Authority may establish its own treasury outside the Treasury Pool, subject to the prior approval of the Board of Supervisors, provided that, at such time as the Authority so establishes its own treasury outside of the Treasury Pool, the Authority has no temporary transfer amounts outstanding from the Treasury Pool pursuant to Article XVI of the California Constitution;

(h) The Authority has no temporary transfer amounts outstanding from the Treasury Pool pursuant to Article XVI of the California Constitution;

(i) Management of the Authority has advised this Board that it is advisable and in the best interests of the Authority for the Authority to establish its own treasury outside of the Treasury Pool;

(i) Sections 2.170.070.D. and 2.170.080.D. of the Enabling Ordinance authorize the Authority to incur indebtedness and further provide that the Board of Supervisors shall provide prior approval, unless (1) such debt has a repayment term of less than one year, and (2) such debt is secured only by personal property;

(j) The Finance and Support Agreement additionally provides that, during all times that the Authority is indebted to the County on account of loans of money (except on account of any indebtedness with respect to any of the Assumed Liabilities, as defined in the Finance and Support Agreement), the Authority shall obtain the written consent of the Board of Supervisors prior to incurring any indebtedness;

(k) The Authority is not indebted to the County on account of any loans of money, except Assumed Liabilities;

(l) Management of the Authority has advised this Board that it is advisable and in the best interests of the Authority for the Authority to establish a revolving line of credit with a financial institution to provide funding from time to time of the Authority's working capital and other financial needs;

(m) Management of the Authority has advised this Board that any such revolving line of credit shall be in a principal amount not to exceed \$20,000,000, provided that such maximum principal amount shall increase to \$50,000,000 for the period from and including July 1, 2019 to and including October 31, 2019 to coincide with the Authority's implementation of new information technology software relating to the Authority's revenue cycle;

(n) Pursuant to a request for proposals issued by the Authority to a group of financial institutions (the "RFP"), management of the Authority considered three proposals and determined that, among all of the responses to the RFP, the proposal submitted by PNC Bank, National Association ("PNC Bank"), presented the most advantageous terms for the Authority;

(o) PNC Bank has advised that the proposed line of credit (the "Proposed Line of Credit") would have a scheduled maturity date of March 1, 2021, would require all outstanding amounts to be paid in full for a period of at least 20 consecutive days during each of the Authority's fiscal years, would be evidenced by a credit agreement (the "Credit Agreement") and, pursuant to a security agreement (the "Security Agreement") and one or more deposit account control agreements (collectively, the "Account Control Agreements"), would be secured by security interests granted by the Authority to PNC Bank in all of the Authority's gross receivables, including the Authority's accounts receivable collection account, with a right of set-off (collectively, the "Collateral"); and

(p) Management of the Authority has advised this Board that establishing its own treasury with PNC Bank will facilitate the security interests proposed to be granted by the Authority in the Collateral.

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Governors of the Kern County Hospital Authority, as follows:

1. This Board finds the facts recited herein are true, and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.

2. This Board hereby approves the establishment by the Authority of its own treasury, separate and apart from the Treasury Pool, and authorizes such treasury to be established at PNC Bank.

3. This Board hereby authorizes and approves the Authority's incurrence of debt pursuant to the Proposed Line of Credit, provided that the maximum available principal amount of credit provided to the Authority thereunder may not exceed \$50,000,000 for the period from and including July 1, 2019 to and including October 31, 2019 and may not exceed \$20,000,000 at any other time, and furthermore, that any indebtedness incurred thereunder at any time shall be secured only by personal property.

4. This Board hereby authorizes and directs any two of the following officers (each, an "Authorized Officer"), for and in the name of and on behalf of the Authority, to execute the Credit Agreement, the Security Agreement and each of the Account Control Agreements, substantially in the form presented to this Board, with such changes as the Authorized Officers executing the same, together with the Vice President & General Counsel of the Authority, shall approve: Chair of this Board, Vice-Chair of this Board, Chief Executive Officer of the Authority, Chief Strategy Officer of the Authority or Chief Financial Officer of the Authority. The execution by any two Authorized Officers of the Credit Agreement, the Security Agreement and each of the Account Control Agreements shall evidence the approval hereby required.

5. This Board hereby authorizes and directs any two Authorized Officers, for and in the name of and on behalf of the Authority, to execute, acknowledge, deliver, record and file such agreements, documents, instruments and certificates, and revisions and corrections thereof and amendments thereto, in each case in a form approved by the Vice President & General Counsel of the Authority, and to perform such other acts and deeds as may, in any such Authorized Officer's discretion and with the approval of the Vice President & General Counsel of the Authority, be deemed necessary or otherwise proper, to effect the purposes of this Resolution and the actions herein authorized.

6. All actions heretofore taken by any Authorized Officer, which are in conformity with the purposes and intent of this Resolution, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved in all respects.

7. The authority conferred upon each Authorized Officer by this Resolution shall remain in full force and effect until written notice of revocation by further resolutions of this Board shall have been delivered to the other parties to such agreements.

8. The provisions of this Resolution are hereby declared to be severable, and, if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

9. This Resolution shall take effect from and after its adoption by this Board, subject only, with respect to the Authority's establishment of its own treasury, to the approval by the Board of Supervisors.

10. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Kern County Board of Supervisors
County Administrative Office
Clerk of the Board of Supervisors
Kern County Treasurer-Tax Collector
Kern Medical Center
Legal Services Department
PNC Bank, National Association



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

Copies of this agreement are available for review in Administration at 1700 Mount Vernon Avenue.



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Comments Regarding Budget Variances for Operating Expenses – December 2018

Recommended Action: Receive and File

Summary:

The following items have budget variances for the month of December 2018:

Gross Operating Revenues:

Gross operating revenues are under budget for the month due to lower than expected inpatient census and respective ancillary charges. In addition, the entry of manual outpatient charges into the billing system fell short of plan due to open staff positions. Charge levels are expected to return to normal for January, as all open positions within the Physician Enterprise Department have been filled.

Indigent Funding:

Indigent funding revenue has a favorable budget variance for the month due in large part to a decision to reserve less revenue from the indigent programs in FY 2019 than was planned when the budget was prepared. Additional information received about these programs after the budget was prepared supports a high likelihood that these funds will be received. This will also more properly match revenue with the periods earned.

Registry Nurses:

Registry nurses expense has an unfavorable budget variance for the month. Kern Medical continues to rely on contracted nurse staffing to supplement the nursing departments while aggressively trying to recruit full time employed nurses.

Medical Fees:

Medical fees have an unfavorable budget variance for December primarily due to an under accrual of Weatherby Locums expenses in prior month. There were also additional charges for the Acute Care Surgery Center that is now providing trauma surgeon services. In addition, there was an increase in on-call pay for the Desert Hand & Plastic Surgery Center.

Other Professional Fees:

Other professional fees have an unfavorable budget variance for December due in part to increased travel fees for Cerner consultants as part of the EHR implementation. There were also additional expenses for Milliman consultants that were engaged to provide an actuarial review of the KCERA retirement plan.

Supplies Expense:

Supplies expenses have an unfavorable budget variance of \$440k for the month of December, mainly due to above average expenses for pharmaceuticals and for prostheses procedures.

Purchased Services:

Purchased services have a favorable budget variance for the month mainly due to an over accrual of expense in prior month for Signature Performance for Health Information Management coding services.

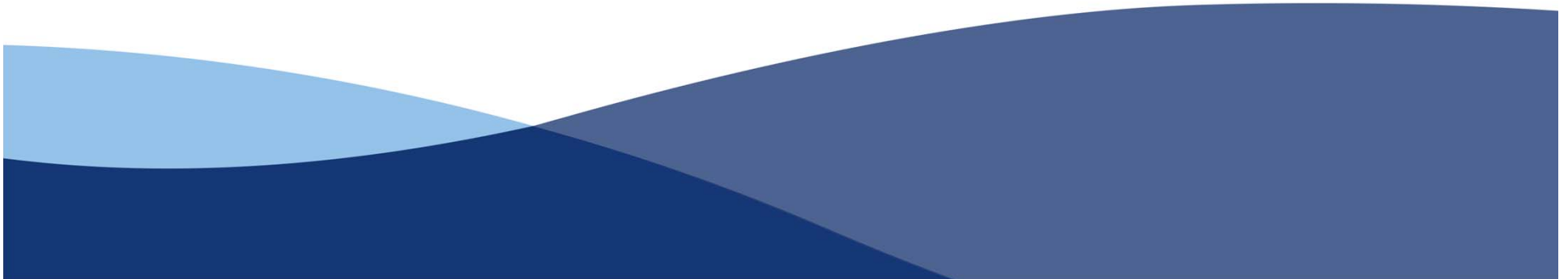
Other Expenses:

Other expenses are over budget for the month of December due in part to a new IT equipment rental contract with Presidio Technology. Monthly rental is \$56k. The first two months of rent for November 2018 and December 2018 were recognized in December. In addition, \$42k of prior year invoices from Universal Hospital Services were paid in December. Payment was delayed for these invoices due to a dispute about the services provided. The issue was settled in December 2018.



**BOARD OF GOVERNORS' FINANCIAL REPORT
KERN MEDICAL – DECEMBER 2018**

FEBRUARY 2019



3-Month Trend Analysis: Revenue & Expense

December 31, 2018

	OCTOBER	NOVEMBER	DECEMBER	BUDGET DECEMBER	VARIANCE POS (NEG)	PY DECEMBER
Gross Patient Revenue	\$ 72,789,112	\$ 66,895,758	\$ 66,966,564	\$ 75,793,682	(12%)	\$ 68,313,864
Contractual Deductions	(55,643,261)	(49,644,291)	(49,428,900)	(56,617,574)	(12.7%)	(48,939,529)
Net Revenue	17,145,851	17,251,467	17,537,664	19,176,108	(9%)	19,374,335
Indigent Funding	12,709,470	12,435,621	13,118,737	9,577,936	37%	8,967,443
Correctional Medicine	2,552,068	2,552,068	1,672,397	2,419,175	(31%)	1,976,127
County Contribution	285,211	285,211	285,211	285,602	(0.1%)	285,211
Incentive Funding	3,314,060	250,000	250,000	250,000	0%	0
Net Patient Revenue	36,006,661	32,774,367	32,864,009	31,708,821	4%	30,603,116
Other Operating Revenue	824,957	1,032,193	977,498	1,113,512	(12%)	858,742
Other Non-Operating Revenue	146,760	73,399	20,287	44,503	(54%)	29,787
Total Operating Revenue	36,978,378	33,879,959	33,861,794	32,866,836	3%	31,491,645
Expenses						
Salaries	13,503,590	12,497,006	13,852,811	13,861,522	(0.1%)	12,614,029
Employee Benefits	6,220,842	5,880,096	5,497,435	5,808,116	(5%)	5,741,843
Contract Labor	1,527,270	1,571,622	1,594,380	1,127,390	41%	1,150,813
Medical Fees	1,096,315	1,566,767	1,877,669	1,623,395	15.7%	1,312,030
Other Professional Fees	1,923,942	1,713,564	1,824,378	1,726,733	6%	1,989,125
Supplies	5,240,560	4,994,017	5,092,496	4,662,130	9%	4,850,911
Purchased Services	1,765,979	2,052,132	1,773,716	1,924,555	(8%)	1,494,550
Other Expenses	2,004,905	1,475,268	1,517,100	1,394,456	9%	1,253,241
Operating Expenses	33,283,404	31,750,472	33,029,984	32,128,297	2.81%	30,406,541
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	3,694,974	2,129,487	831,810	738,539	13%	1,085,105
EBIDA Margin	10%	6%	2%	2%	9%	3%
Interest	1,669,381	170,641	45,185	50,504	(11%)	(9,379)
Depreciation	523,585	519,707	516,504	516,653	(0%)	513,049
Amortization	59,792	58,691	58,691	41,352	42%	41,505
Total Expenses	35,536,161	32,499,512	33,650,364	32,736,806	2.8%	30,951,715
Operating Gain (Loss)	1,442,217	1,380,447	211,430	130,031	63%	539,930
Operating Margin	3.9%	4.1%	0.6%	0.40%	58%	1.7%

Year-to-Date: Revenue & Expense

December 31, 2018

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Gross Patient Revenue	\$ 425,821,383	447,083,675	(5%)	\$ 433,412,425	(1.8%)
Contractual Deductions	(322,023,897)	(333,706,089)	(4%)	(323,457,249)	(0.4%)
Net Revenue	103,797,487	113,377,586	-8%	109,955,175	
Indigent Funding	77,564,797	57,467,619	35%	54,261,449	43%
Correctional Medicine	14,432,738	14,515,048	(1%)	11,856,762	22%
County Contribution	1,711,266	1,713,614	(0.1%)	1,711,266	0%
Incentive Funding	4,564,060	1,500,000	204%	0	0%
Net Patient Revenue	202,070,347	188,573,867	7%	177,784,653	14%
Other Operating Revenue	6,218,348	6,609,233	(6%)	6,620,145	(6%)
Other Non-Operating Revenue	299,258	264,146	13%	173,071	73%
Total Operating Revenue	208,587,953	195,447,246	7%	184,577,869	13%
Expenses					
Salaries	79,437,509	81,583,669	(3%)	73,927,085	7%
Employee Benefits	35,399,938	36,030,137	(2%)	31,757,524	11%
Contract Labor	9,235,923	6,584,217	40%	7,221,548	28%
Medical Fees	11,040,762	9,554,056	16%	7,822,514	41%
Other Professional Fees	10,488,228	10,129,382	4%	8,789,132	19%
Supplies	30,459,491	27,319,700	11%	25,631,403	19%
Purchased Services	11,751,326	11,423,166	3%	10,583,433	11%
Other Expenses	9,631,228	8,295,444	16%	8,783,228	10%
Operating Expenses	197,444,404	190,919,770	3%	174,515,867	13%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	11,143,549	4,527,476	146%	10,062,002	11%
EBIDA Margin	5%	2%	131%	5%	-2%
Interest	2,415,159	303,023	697%	100,236	2,309%
Depreciation	3,097,979	3,248,137	-5%	3,246,567	(5%)
Amortization	338,920	248,111	37%	174,248	95%
Total Expenses	203,296,461	194,719,041	4%	178,036,918	14%
Operating Gain (Loss)	5,291,492	728,205	627%	6,540,951	(19%)
Operating Margin	3%	0.4%	581%	4%	(28%)

3-Month Trend Analysis: Cash Indicators

December 31, 2018

		OCTOBER	NOVEMBER	DECEMBER	GOALS DECEMBER	PY DECEMBER
Cash						
	Total Cash	63,772,426	19,329,540	24,373,434	17,640,137	60,025,766
	Days Cash On Hand	59	18	22	16	61
	Days In A/R - Gross	74.64	80.25	86.81	70.00	90.10
	Patient Cash Collections	\$ 18,420,777	\$ 13,527,677	\$ 15,241,673	\$ 17,037,798	\$ 16,423,850
Indigent Funding Liabilites Due to the State						
	FY 2007 Waiver Payable (County Responsibility)	\$ (745,824)	\$ (745,824)	\$ (745,824)	N/A	\$ (745,824)
	FY 2008 Waiver Payable (County Responsibility)	\$ (6,169,000)	\$ (6,169,000)	\$ (6,169,000)	N/A	\$ (6,169,000)
	FY 2009 Waiver Payable (County Responsibility)	\$ (2,384,000)	\$ (2,384,000)	\$ (2,384,000)	N/A	\$ (2,384,000)
	FY 2011 Waiver Payable (County Responsibility)	\$ (10,493,878)	\$ (10,493,878)	\$ (10,493,878)	N/A	\$ (10,493,878)
	Total County Responsibility	\$ (19,792,702)	\$ (19,792,702)	\$ (19,792,702)		\$ (19,792,702)
	FY 2015 Waiver Payable (Kern Medical Responsibility)	\$ (11,223,792)	\$ (11,223,792)	\$ (11,223,792)	N/A	\$ (11,223,792)
	FY 2016 Waiver Payable (Kern Medical Responsibility)	\$ (2,819,361)	\$ (2,819,361)	\$ (2,819,361)	N/A	\$ (2,819,361)
	DSH Payable (Kern Medical Responsibility)	\$ (26,851,210)	\$ (26,851,210)	\$ (42,388,763)	N/A	\$ (24,746,355)
	Total Kern Medical Responsibility	\$ (40,894,363)	\$ (40,894,363)	\$ (56,431,916)		\$ (38,789,508)
	Total Indigent Funding Liabilites Due to the State	\$ (60,687,065)	\$ (60,687,065)	\$ (76,224,618)	N/A	\$ (58,582,210)

3-Month Trend Analysis: Operating Metrics

December 31, 2018

					BUDGET	VARIANCE	PY
		OCTOBER	NOVEMBER	DECEMBER	DECEMBER	POS (NEG)	DECEMBER
Operating Metrics							
Total Expense per Adjusted Admission		22,793	22,113	23,196	20,124	15%	20,652
Total Expense per Adjusted Patient Day		4,358	4,379	4,618	4,004	15%	4,291
Supply Expense per Adjusted Admission		3,361	3,398	3,510	2,866	22%	3,237
Supply Expense per Surgery		1,659	1,611	2,314	1,671	39%	1,772
Supplies as % of Net Patient Revenue		15%	15%	15%	15%	5%	16%
Pharmaceutical Cost per Adjusted Admission		1,511	1,710	1,610	1,281	26%	1,326
Net Revenue Per Adjusted Admission		10,998	11,738	12,089	11,788	3%	\$ 12,927

Year-to-Date: Operating Metrics

December 31, 2018

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Operating Metrics						
Total Expense per Adjusted Admission		21,729	20,571	6%	19,261	13%
Total Expense per Adjusted Patient Day		4,345	4,093	6%	3,905	11%
Supply Expense per Adjusted Admission		3,256	2,886	13%	2,773	17%
Supply Expense per Surgery		1,981	1,482	34%	1,395	42%
Supplies as % of Net Patient Revenue		15%	14%	4%	14%	4.6%
Pharmaceutical Cost per Adjusted Admission		1,464	1,283	14%	1,149	27%
Net Revenue Per Adjusted Admission		11,094	11,978	(8%)	11,895	(7%)

INDIGENT PATIENT CARE FUNDING - MTD & YTD

FOR THE MONTH DECEMBER 31, 2018

MTD ACTUAL	MTD BUDGET	VAR \$ FAV/(UNFAV)	VAR %	DESCRIPTION	YTD ACTUAL	YTD BUDGET	VAR \$ FAV/(UNFAV)	VAR %
300,833	316,667	(15,833)	-5%	MEDI-CAL HOSPITAL QUALITY ASSURANCE FEE	2,829,064	1,900,000	929,064	49%
2,375,592	1,250,311	1,125,280	90%	MEDI-CAL RATE-RANGE REVENUE	14,579,635	7,501,869	7,077,767	94%
150,417	158,333	(7,917)	-5%	PHYSICIAN SPA REVENUE	902,500	950,000	(47,500)	-5%
278,271	292,917	(14,646)	-5%	AB 915 OUTPATIENT SUPPLEMENTAL PROGRAM	2,918,966	1,757,500	1,161,466	66%
2,259,417	2,259,417	0	0.0%	PRIME - NEW WAIVER	13,556,500	13,556,500	0	0.0%
2,369,458	2,369,458	0	0.0%	GPP - NEW WAIVER	14,299,633	14,216,750	82,883	0.6%
1,242,917	1,242,917	0	0.0%	WHOLE PERSON CARE	7,457,500	7,457,500	0	0.0%
1,399,166	1,064,583	334,583	31%	EPP REVENUE	12,045,000	6,387,500	5,657,500	89%
2,742,666	623,333	2,119,333	340%	QIP REVENUE	8,976,000	3,740,000	5,236,000	140%
13,118,737	9,577,936	3,540,800	37%	SUB-TOTAL - GOVERNMENTAL REVENUE	77,564,797	57,467,619	20,097,178	35%
1,672,397	2,419,175	(746,777)	-30.9%	CORRECTIONAL MEDICINE	14,432,738	14,515,048	(82,310)	-0.6%
285,211	285,602	(391)	-0.1%	COUNTY CONTRIBUTION	1,711,266	1,713,614	(2,348)	-0.1%
15,076,345	12,282,713	2,793,632	23%	TOTAL INDIGENT CARE & COUNTY FUNDING	93,708,801	73,696,280	20,012,520	27%

OTHER REVENUE

FOR THE MONTH DECEMBER 31, 2018

OTHER OPERATING REVENUE

	MTD ACTUAL	MTD BUDGET	VARIANCE	YTD ACTUAL	YTD BUDGET	VARIANCE
MEDICAL POSTGRAD EDUCATION TUITION	166,907	282,810	(115,903)	1,534,840	1,678,615	(143,775)
STAFF DEVELOPMENT EDUC FEES	380	1,235	(855)	3,515	7,332	(3,817)
CAFETERIA REVENUE	72,149	81,321	(9,172)	486,301	482,678	3,623
FINANCE CHARGES-PATIENT AR	17,997	19,905	(1,908)	76,911	118,143	(41,232)
REBATES AND REFUNDS	8,956	83,856	(74,900)	483,366	497,724	(14,358)
DRUG CO. CASH BACK	5,972	1,388	4,583	10,659	8,239	2,419
PHOTOCOPY FEES	1,560	1,944	(384)	11,555	11,539	16
JURY WITNESS FEES	0	58	(58)	0	345	(345)
MEDICAL RECORDS FEES	1,560	4,543	(2,983)	14,610	26,967	(12,357)
ADMINISTRATIVE FEES-PAYROLL	75	0	75	416	0	416
PHYSICIAN PRO FEE-ER LOCKBOX	15,364	2,658	12,706	42,774	15,775	26,999
OTHER REVENUE	685	38,316	(37,631)	14,009	227,421	(213,412)
LASER CENTER REVENUE	14,675	50,959	(36,284)	99,391	302,466	(203,075)
CANCELLED OUTLAWED WARRANTS	0	5,508	(5,508)	(15,112)	32,691	(47,803)
GRANTS - KHS	189,347	219,493	(30,146)	602,186	1,302,795	(700,610)
MADDY FUNDS-EMERG MEDICAL SVCS	0	34,472	(34,472)	108,977	204,605	(95,628)
PRIMARY CARE & OTHER INCENTIVE	100	2,055	(1,955)	24,260	12,196	12,064
VETERANS ADMIN REVENUE	586	3,061	(2,476)	16,398	18,171	(1,774)
JAMISON CENTER MOU	35,585	23,162	12,423	134,058	137,480	(3,422)
MENTAL HEALTH MOU	332,104	223,904	108,201	1,706,045	1,328,977	377,068
PATERNITY DECLARATION REV	0	1,082	(1,082)	6,050	6,420	(370)
PEDIATRIC FORENSIC EXAMS	0	8,281	(8,281)	13,800	49,151	(35,351)
FOUNDATION CONTRIBUTIONS	0	3,535	(3,535)	29,342	20,980	8,362
DONATED EQUIPMENT	0	9,095	(9,095)	168,019	53,986	114,033
PAY FOR PERFORMANCE	118,999	10,859	108,140	218,990	64,453	154,537
PROPOSITION 56 DIRECTED PAYMEN	255	0	255	432,745	0	432,745
WORKERS' COMPENSATION REFUNDS	0	14	(14)	0	84	(84)
TOTAL OTHER OPERATING REVENUE	977,498	1,113,512	(136,014)	6,218,348	6,609,233	(390,885)
OTHER NON-OPERATING REVENUE						
OTHER MISCELLANEOUS REVENUE	500	228	272	(29,027)	1,351	(30,378)
INTEREST ON FUND BALANCE	19,787	44,275	(24,488)	328,285	262,795	65,490
TOTAL OTHER NON-OPERATING REVENUE	20,287	44,503	(24,216)	299,258	264,146	35,112

**KERN MEDICAL
BALANCE SHEET**

	December 2018	December 2017
CURRENT ASSETS:		
CASH	\$24,373,434	\$60,025,766
CURRENT ACCOUNTS RECEIVABLE (incl. CLINIC CHARGES RECEIVABLE)	194,999,270	208,937,190
ALLOWANCE FOR UNCOLLECTIBLE RECEIVABLES - CURRENT	(149,282,968)	(168,875,016)
-NET OF CONTRACTUAL ALLOWANCES	45,716,303	40,062,174
CORRECTIONAL MEDICINE RECEIVABLE	1,593,835	0
MD SPA	6,111,006	4,619,819
HOSPITAL FEE RECEIVABLE	(445,178)	747,299
CPE - O/P DSH RECEIVABLE	3,394,221	6,146,534
BEHAVIORAL HEALTH MOU	2,221,722	1,160,872
MANAGED CARE IGT (RATE RANGE)	22,997,731	12,283,664
RECEIVABLE FROM LIHP	(6,547,536)	(6,547,536)
OTHER RECEIVABLES	3,072,549	2,288,687
PRIME RECEIVABLE	12,758,004	11,723,273
AB85/75% DEFAULT PCP RECEIVABLE	(770,256)	7,312,643
GPP (Global Payment Program)	9,982,445	8,142,098
WPC (Whole Person Care)	8,241,001	7,104,115
EPP (Enhanced Payment Program)	31,045,000	0
QIP (Quality Incentive Program)	8,976,000	0
INTEREST ON FUND BALANCE RECEIVABLE	165,010	89,362
MANAGED CARE IGT (SPD)	0	(7,953,923)
WAIVER RECEIVABLE FY07	(745,824)	(745,824)
WAIVER RECEIVABLE FY08	(6,169,000)	(6,169,000)
WAIVER RECEIVABLE FY09	(2,384,000)	(2,384,000)
WAIVER RECEIVABLE FY10	579,696	579,696
WAIVER RECEIVABLE FY11	(10,493,878)	(10,493,878)
WAIVER RECEIVABLE FY12	679,308	679,308
WAIVER RECEIVABLE FY15	(11,223,792)	(11,223,792)
WAIVER RECEIVABLE FY16	(2,819,361)	(2,819,361)
PREPAID EXPENSES	3,464,340	4,201,840
PREPAID MORRISON DEPOSIT	813,320	799,706
INVENTORY AT COST	5,395,050	4,208,009
TOTAL CURRENT ASSETS	149,981,151	123,837,549
PROPERTY, PLANT & EQUIPMENT:		
LAND	542,961	170,395
EQUIPMENT	54,834,308	48,650,193
BUILDINGS	87,486,989	82,462,922
CONSTRUCTION IN PROGRESS	27,727,167	7,821,180
LESS: ACCUMULATED DEPRECIATION	(92,412,714)	(86,858,506)
NET PROPERTY, PLANT & EQUIPMENT	78,178,711	52,246,184
NET INTANGIBLE ASSETS		
INTANGIBLE ASSETS	14,688,166	12,884,503
ACCUMULATED AMORTIZATION INTANGIBLES	(11,346,156)	(10,724,616)
NET INTANGIBLE ASSETS	3,342,010	2,159,887
LONG-TERM ASSETS:		
LONG-TERM PATIENT ACCOUNTS RECEIVABLE		
DEFERRED OUTFLOWS - PENSIONS	70,895,681	71,902,645
INVESTMENT IN SURGERY CENTER	3,643,659	0
CASH HELD BY COP IV TRUSTEE	922,330	912,973
TOTAL LONG-TERM ASSETS	75,461,670	72,815,618
TOTAL ASSETS	\$306,963,542	\$251,059,238

**KERN MEDICAL
BALANCE SHEET**

	December 2018	December 2017
CURRENT LIABILITIES:		
ACCOUNTS PAYABLE	\$25,236,916	\$19,770,437
ACCRUED SALARIES & EMPLOYEE BENEFITS	23,817,176	24,302,759
INTEREST PAYABLE	4,453,141	1,126,383
OTHER ACCRUALS	3,435,671	5,300,089
ACCRUED CWCAP LIABILITY	0	158,398
CURRENT PORTION - CAPITALIZED LEASES	1,910,146	337,560
CURR LIAB - COP 2011 PAYABLE	1,131,693	1,085,718
CURR LIAB - P.O.B.	1,444,238	1,337,416
MEDICARE COST REPORT LIABILITY PAYABLE	0	3,794,129
MEDI-CAL COST REPORT LIABILITY	845,580	1,430,435
INDIGENT FUNDING PAYABLE	11,651,235	15,226,266
DSH PAYABLE	42,388,763	24,746,355
CREDIT BALANCES PAYABLES	2,924,063	4,215,660
DEFERRED REVENUE - COUNTY CONTRIBUTION	2,100,667	2,739,701
TOTAL CURRENT LIABILITIES	121,339,289	105,571,307
LONG-TERM LIABILITIES:		
LONG-TERM LIABILITY-COP 2011	0	1,131,693
NET UNAMORTIZED DISCOUNT COP	39,985	59,978
LONG-TERM LIABILITY - CAPITAL LEASES	6,267,636	1,387,154
NET OPEB (OTHER POST EMPLOYMENT BENEFITS)	4,306,044	4,201,203
NET PENSION LIABILITY	293,255,458	329,935,445
L.T. LIAB. - P.O.B. INTEREST PAYABLE 08	14,842,004	14,722,232
L.T. LIAB. - P.O.B. INTEREST PAYABLE 03	4,329,041	3,917,723
L.T. P.O.B. PAYABLE 95	11,590,866	16,695,541
L.T. P.O.B. PAYABLE 08	5,392,893	5,392,893
ACCRUED PROFESSIONAL LIABILITY	7,026,444	3,474,640
ACCRUED WORKERS' COMPENSATION PAYABLE	8,511,000	6,773,000
DEFERRED INFLOWS - PENSIONS	69,247,058	22,238,926
PENSION OBLIGATION BOND PAYABLE	2,643,205	3,678,145
ACCRUED COMPENSATED ABSENCES	3,830,085	3,830,085
TOTAL LONG-TERM LIABILITIES	431,281,719	417,438,657
NET POSITION		
RETAINED EARNINGS - CURRENT YEAR	36,714,021	39,814,215
RETAINED EARNINGS - PRIOR YEAR	(282,371,488)	(311,764,941)
TOTAL NET POSITION	(245,657,467)	(271,950,726)
TOTAL LIABILITIES & NET POSITION	\$306,963,542	\$251,059,238



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Kern County Hospital Authority, Chief Executive Officer Report

Recommended Action: Receive and File

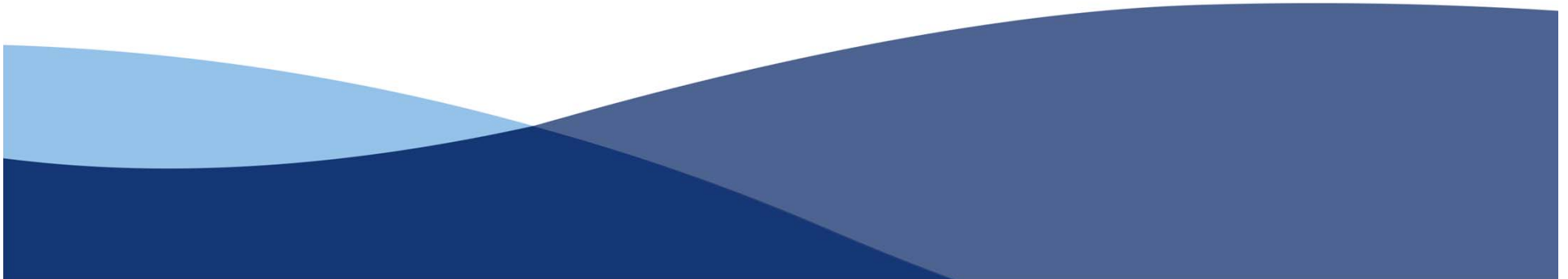
Summary:

The Chief Executive Officer has provided the attached 3-month trend Analysis: Volume and Strategic Indicators for Kern Medical



**BOARD OF GOVERNORS' VOLUMES REPORT
KERN MEDICAL – DECEMBER 2018**

FEBRUARY 2019



3-Month Trend Analysis: Volume and Strategic Indicators

December 31, 2018

		OCTOBER	NOVEMBER	DECEMBER	BUDGET DECEMBER	VARIANCE POS (NEG)	PY DECEMBER
VOLUME							
	Adjusted Admissions (AA)	1,559	1,470	1,451	1,627	(11%)	1,499
	Adjusted Patient Days	8,154	7,422	7,287	8,176	(10.9%)	7,213
	Admissions	770	743	785	899	(13%)	853
	Average Daily Census	130	125	127	146	(13%)	132
	Patient Days	4,027	3,752	3,943	4,519	(13%)	4,105
	Available Occupancy %	60.7%	58.4%	59.4%	68.1%	(13%)	61.9%
	Average LOS	5.2	5.0	5.0	5.0	(0.1%)	4.8
	Surgeries						
	Inpatient Surgeries (Main Campus)	219	185	179	214	(16%)	214
	Outpatient Surgeries (Main Campus)	286	253	225	227	(1%)	227
	Total Surgeries	505	438	404	441	(8%)	441
	Births	227	223	242	232	4%	238
	ER Visits						
	Admissions	384	375	401	423	(5%)	425
	Treated & Released	3,756	3,618	3,555	4,028	(12%)	3,638
	Total ER Visits	4,140	3,993	3,956	4,451	(11%)	4,063
	Trauma Activations	230	223	200	234	(15%)	256
	Outpatient Clinic Visits						
	Total Clinic Visits	14,571	12,726	12,064	12,342	(2%)	10,408
	Total Unique Patient Clinic Visits	10,650	9,578	9,244	9,709	(5%)	8,188
	New Unique Patient Clinic Visits	2,173	1,858	1,499	1,742	(14%)	1,469

Year-to-Date: Volume and Strategic Indicators

December 31, 2018

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
VOLUME						
	Adjusted Admissions (AA)	9,356	9,466	(1%)	9,244	1%
	Adjusted Patient Days	46,793	47,573	(2%)	45,595	3%
	Admissions	4,777	5,187	(8%)	5,037	(5%)
	Average Daily Census	130	142	(8%)	136	(5%)
	Patient Days	23,892	26,070	(8%)	25,044	(5%)
	Available Occupancy %	60.7%	66%	(8%)	63.6%	(5%)
	Average LOS	5.0	5.0	(0%)	5.0	0.6%
	Surgeries					
	Inpatient Surgeries (Main Campus)	1,253	1,422	(12%)	1,415	(11%)
	Outpatient Surgeries (Main Campus)	1,485	1,494	(1%)	1,487	(0.1%)
	Total Surgeries	2,738	2,916	(6%)	2,902	(6%)
	Births	1,420	1,336	6%	1,337	6%
	ER Visits					
	Admissions	2,407	2,521	(4.5%)	2,615	(8%)
	Treated & Released	22,429	24,013	(7%)	21,904	2%
	Total ER Visits	24,836	26,534	(6%)	24,519	1%
	Trauma Activations					
	Trauma Activations	1,370	1,396	(2%)	1,561	(12%)
	Outpatient Clinic Visits					
	Total Clinic Visits	76,659	73,557	4%	68,847	11%
	Total Unique Patient Clinic Visits	57,396	57,018	1%	53,321	8%
	New Unique Patient Clinic Visits	11,040	11,868	(7%)	11,126	(1%)

3-Month Trend Analysis: Payor Mix

December 31, 2018

	OCTOBER	NOVEMBER	DECEMBER	BUDGET DECEMBER	VARIANCE POS (NEG)	PY DECEMBER
PAYOR MIX - Charges						
Commercial FFS/HMO/PPO	7%	8%	9%	10%	-12%	10%
Medi-Cal	31%	29%	29%	30%	-4%	31%
Medi-Cal HMO - Kern Health Systems	32%	30%	29%	31%	-4%	32%
Medi-Cal HMO - Health Net	9%	9%	9%	9%	-4%	9%
Medi-Cal HMO - Other	1%	1%	1%	0%	149%	1%
Medicare	10%	12%	12%	11%	12%	11%
Medicare - HMO	3%	3%	4%	2%	110%	3%
County Programs	0.3%	0.3%	0.3%	0.3%	15%	0.3%
Workers' Compensation	0.5%	0.4%	0.3%	0.5%	-39%	1%
Self Pay	6%	7%	6%	6%	4%	4%
Total	100%	100%	100%	100%		100%

Year-to-Date: Payor Mix

December 31, 2018

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
PAYOR MIX - Charges						
	Commercial FFS/HMO/PPO	9%	10%	-18%	11%	-23%
	Medi-Cal	30%	30%	-1%	30%	0.4%
	Medi-Cal HMO - Kern Health Systems	31%	31%	-1%	30%	0.4%
	Medi-Cal HMO - Health Net	9%	9%	-1%	9%	0.4%
	Medi-Cal HMO - Other	1%	0.4%	157%	1%	0.4%
	Medicare	10%	10%	-1%	10%	5%
	Medicare - HMO	3%	2%	42%	2%	41%
	County Programs	0.3%	0.3%	18%	0.5%	-38%
	Workers' Compensation	0.4%	0.5%	-24%	1%	-68%
	Self Pay	7%	6%	15%	5%	36%
	Total	100%	100%		100%	

3-Month Trend Analysis: Labor and Productivity Metrics

December 31, 2018

	OCTOBER	NOVEMBER	DECEMBER	BUDGET DECEMBER	VARIANCE POS (NEG)	PY DECEMBER
Labor Metrics						
Productive FTEs	1,459.93	1,388.41	1,358.95	1,496.78	(9%)	1,302.58
Non-Productive FTEs	191.80	264.31	282.95	216.82	30%	270.50
Contract Labor FTEs	94.17	96.68	90.38	78.46	15%	80.39
Total FTEs	1,651.73	1,652.72	1,641.90	1,713.60	(4%)	1,573.08
FTE's Per AOB Paid	6.28	6.68	6.99	6.50	8%	6.76
FTE's Per AOB Worked	5.55	5.61	5.78	5.68	2%	5.60
Labor Cost/FTE (Annualized)	139,036.33	130,389.50	137,928.20	130,923.11	5%	133,300.80
Benefits Expense as a % of Benefitted Labor Expense	64%	63%	52%	56%	(8%)	60%
Salaries & Benefits as % of Net Patient Revenue	59%	61%	64%	66%	(3%)	64%

Year-to-Date: Labor and Productivity Metrics

December 31, 2018

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Labor Metrics						
	Productive FTEs	1,415.67	1,478.24	(4%)	1,357.03	4%
	Non-Productive FTEs	235.31	214.32	10%	214.55	10%
	Contract Labor FTEs	96.44	77.20	25%	87.77	10%
	Total FTEs	1,650.98	1,692.56	(2%)	1,571.58	5%
	FTE's Per AOB Paid	6.42	6.54	(2%)	6.29	2%
	FTE's Per AOB Worked	5.51	5.72	(4%)	5.43	1%
	Labor Cost/FTE (Annualized)	135,347.85	131,919.96	3%	128,544.93	5%
	Benefits Expense as a % of Benefitted Labor Expense	60%	59%	2%	58%	4%
	Salaries & Benefits as % of Net Patient Revenue	61%	66%	(7%)	64%	(3%)



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

February 20, 2019

Subject: Proposed retroactive Agreement with Meridian Healthcare Partners, Inc.

Recommended Action: Approve; Authorize the Vice Chairman to sign

Summary:

Kern Medical requests your Board retroactively approve the attached proposed new Agreement for Professional Services with Meridian Healthcare Partners, Inc., for Chief Executive Officer and healthcare management services to the hospital authority and Kern Medical. Meridian has provided such services since December 16, 2013.

The proposed Agreement, which supersedes the existing agreement, is for a term of seven years from December 16, 2018 through December 15, 2025, and contains an option to extend the term for three additional terms of two-years each. The financial terms remain the same: As previously negotiated and reflected in Amendment No. 9, approved by your Board on October 17, 2018, Meridian will be paid a monthly management fee of \$420,207 for the period December 16, 2018 through December 15, 2019 (\$5,042,484 annually), and \$432,814, for the period December 16, 2019 through December 15, 2020 (\$5,193,768 annually, a 3% increase over the prior year). In the 90-day period prior to December 16, 2020, and each subsequent December 16, the parties have agreed to meet and confer in good faith regarding the management fee paid to Meridian. If the parties are unable to reach an agreement concerning the management fee before the applicable anniversary date, the then-current management fee will remain in effect until an agreement is reached, subject to possible retroactive adjustment if agreed. The compensation paid to Meridian covers all salaries, costs and expenses to provide the services. The maximum payable will not exceed \$10,236,252 for the period December 16, 2018 through December 15, 2020.

The proposed Agreement also reflects a change in the process for appointing the Chief Executive Officer. Instead of Meridian providing a specified individual by name, Meridian's obligation now is to engage or employ a "competent and experienced individual" to serve as Chief Executive Officer. Such individual remains subject to the provisions of the county ordinance code that established the Authority. This change eliminates any contractual obstacle to succession planning should the need arise and facilitates the preservation of the culture, relationships, systems, experience and goodwill Meridian has cultivated over the past five years within the county, Kern Medical, the community and healthcare industry. The responsibilities of the Chief Executive Officer and Meridian remain unchanged.

Therefore, it is recommended that your Board retroactively approve the Agreement with Meridian Healthcare Partners, Inc., and authorize the Vice Chairman to sign.

Owned and Operated by the Kern County Hospital Authority
A Designated Public Hospital

1700 Mount Vernon Avenue | Bakersfield, CA 93306 | (661) 326-2000 | KernMedical.com

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Meridian Healthcare Partners, Inc.)**

This Agreement is made and entered into this ____ day of _____, 2019, between the Kern County Hospital Authority, a local unit of government (“Authority”), and Meridian Healthcare Partners, Inc., a California corporation (“Contractor”), with its principal place of business located at 3511 Union Avenue, Bakersfield, California 93306.

RECITALS

(a) Authority is authorized, pursuant to section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(b) Authority owns and operates Kern Medical Center, a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California 93306, and its affiliated clinics (collectively “KMC”); and

(c) Authority requires the assistance of Contractor to supervise and manage the day-to-day operations of KMC, as such services are unavailable from Authority resources; and

(d) Authority currently contracts with Contractor as an independent contractor to provide healthcare consulting and executive management services including supervision and management of the day-to-day operations of KMC (Kern County Agt. #911-2013, dated December 3, 2013, as amended and assigned), for the period December 16, 2013 through December 15, 2020; and

(e) Authority has determined that the goal of improved quality of services can only be achieved by contracting with a single entity for the provision of management services, and that Authority should continue to retain Contractor to be the exclusive provider of executive management services for Authority and KMC, and Contractor desires to provide such services on the terms and conditions set forth in this Agreement; and

(f) Each party expressly understands and agrees that Kern County Agt. #911-2013 is superseded by this Agreement as of the Commencement Date;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree as follows:

1. **Term.** The term of this Agreement shall be for a period of seven (7) years, commencing as of December 16, 2018 (the “Commencement Date”), and shall end December 15, 2025, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

Authority reserves the right to extend the term of this Agreement for three (3) additional terms of two (2) years each, provided that Authority notifies Contractor in writing of its intention to renew at least 18 months prior to the expiration of the then current term. Any renewal shall be in writing and signed by both parties through a formal amendment to this Agreement.

2. **Appointment of Chief Executive Officer.** Contractor shall engage or employ a competent and experienced individual, subject to the provisions of Title 2, Chapter 2.170 of the Kern County Code of Ordinances, to serve as Chief Executive Officer of Authority (“CEO”). CEO shall have responsibility for the general management of Authority in all its activities and departments and shall be responsible for the administration of Authority and KMC, subject to the Kern County Hospital Authority Bylaws for Governance (“Bylaws”), and to the direction, policies, or orders of the Board of Governors or by any of the committees to which the Board of Governors has lawfully delegated authority for such action. CEO shall be the Chief Executive Officer of KMC and all other facilities and operations of Authority. CEO shall be the general manager of Authority, and shall have the authority to exercise executive supervision over the general business and affairs of Authority in accordance with the statement of duties and responsibilities adopted by the Board of Governors and set forth in the Bylaws. Subject to the control of the Board of Governors and the scope of his or her lawful authority, as it may be defined from time to time by the Board of Governors, CEO shall act as the duly authorized representative of Authority in all matters in which the Board of Governors has not formally designated some other person to so act.

3. **Exclusive Rights.** During the term of this Agreement and any extensions thereof, Contractor will have exclusive authority and responsibility, as specifically set forth in this Agreement, to supervise and manage the day-to-day operations of KMC, to the extent permitted by applicable law, effective with the Commencement Date. To accomplish all of this, neither Authority nor KMC will cause or permit any other persons or entities to provide any such services, except as expressly permitted by this Agreement or other written agreement between Authority and Contractor. Contractor recognizes, acknowledges and understands that it is accepting benefits under this exclusive provider arrangement and that therefore if, for any reason, this Agreement is terminated or expires and is not renewed by the parties, the benefits of this exclusive provider arrangement may be conveyed by Authority and KMC to another contracting party.

4. **Obligations of Contractor.**

4.1 **Specified Services.** Contractor shall perform the services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

4.2 **Representations.** Contractor makes the following representations, which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to

Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

4.3 Standard of Care. Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all of its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Authority shall not operate as a waiver or release.

4.4 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Authority determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of section 40; or (c) pursue any and all other remedies at law or in equity.

4.5 Contractor Staff. Contractor shall engage or employ such qualified personnel as are necessary for the proper and efficient management of KMC, including without limitation, the following positions: one (1) Chief Executive Officer; one (1) Chief Strategy Officer; one (1) Chief Operating Officer; one (1) Vice President, Ambulatory Services; one (1) Vice President, Administrative Services; one (1) Vice President, Human Resources; one (1) Chief Medical Officer; one (1) Director, Performance Analysis; one (1) Director, Change Management; one (1) Director, Communications; one (1) Director, Physician Recruitment; one (1) Director, Outpatient Integration; one (1) Director, Care Coordination; and two (2) Administrative Assistants. All personnel provided by Contractor shall be compensated by Contractor and shall be employees or independent contractors of Contractor. Contractor shall be responsible for compensating all such engaged or employed persons, including, as applicable, payroll taxes, benefits, and workers' compensation insurance. Contractor shall be responsible for supervision of activities performed by all employees and independent contractors.

4.6 Compliance with Standards. All services performed by Contractor shall be performed in accordance with applicable state and federal laws and regulations, accreditation standards, and Authority and KMC policies and procedures.

4.7 Cooperation with Authority. Contractor shall cooperate with Authority and Authority staff in the performance of all work hereunder.

4.8 Assigned Personnel.

4.8.1 Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time Authority, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Authority.

4.8.2 CEO is deemed by Authority to be a key individual whose services were a material inducement to Authority to enter into this Agreement, and without whose services Authority would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change CEO without the prior written approval of Authority.

4.8.3 In the event that any of Contractor's personnel assigned to perform services under this Agreement becomes unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

4.8.4 Contractor understands and agrees that Contractor's assigned personnel will perform the services required of Contractor under this Agreement on a full-time basis, which is defined as a minimum of 80 hours per biweekly period, and includes any other hours in excess thereof that are necessary for Contractor's assigned personnel to perform the services as set forth in this Agreement.

4.9 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

4.10 Authorized Absences. Notwithstanding any provision in this Agreement to the contrary, CEO shall be permitted to be absent from KMC during normal business hours for vacation or sick leave, or to attend professional meetings and outside professional duties in the healthcare field. CEO shall notify the Chairman, Board of Governors, or designee, in advance of taking any vacation leave or other planned absence that exceeds three (3) business days.

5. Obligations of Authority.

5.1 Authority Designee. Authority will designate a primary contact, who will arrange for Authority and KMC staff assistance, as may be required.

5.2 Space. Authority shall furnish for the use of Contractor such space and facilities at KMC as may be deemed necessary by Authority for the proper operation and conduct of KMC ("Premises"). Authority will, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Contractor shall not use such space or equipment for other business or personal use.

5.3 Use Limitations on Space. Contractor shall not use any part of KMC for the provision of any services to any person or entity other than the provision of the services in accordance with this Agreement. This Agreement shall not be construed to be a lease to Contractor of any portion of the Premises, and insofar as Contractor may use a portion of said Premises, Contractor does so as a licensee only, and Authority and KMC shall, at all times, have full and free access to the same.

5.4 Equipment. Authority shall furnish for the use of Contractor such equipment as is deemed necessary by Authority for the proper operation and conduct of KMC consistent with community standards. Authority shall keep and maintain this equipment in good order and repair and replace such equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and KMC and budget constraints.

5.5 Services and Supplies. Authority shall provide or arrange for the provision of janitorial services, housekeeping services, utilities, together with such other hospital services, including medical records, administrative and engineering services, and expendable supplies, as Authority deems necessary for the proper operation and conduct of KMC.

5.6 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise Authority and KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports, which shall be retained by Authority and KMC for follow-up action and evaluation of performance.

6. Payment for Services. As consideration for the services provided by Contractor hereunder, Authority will pay Contractor a monthly management fee ("Management Fee") in accordance with the schedule set forth in paragraph 6.1. All services are payable in arrears.

6.1 Management Fee.

6.1.1 Effective December 16, 2018. Authority shall pay Contractor a Management Fee monthly in the amount of \$420,207, as follows: Contractor shall be entitled to receive two (2) payments per month, each payment being equal to \$210,103, payable on or before the 1st day, but no later than the 5th day, and the 15th day, but no later than the 20th day, of each month for the period December 16, 2018 through December 15, 2019.

6.1.2 Effective December 16, 2019. Authority shall pay Contractor a Management Fee monthly in the amount of \$432,814, as follows: Contractor shall be entitled to receive two (2) payments per month, each payment being equal to \$216,406.50, payable on or before the 1st day, but no later than the 5th day, and the 15th day, but no later than the 20th day, for the period December 16, 2019 through December 15, 2020.

6.1.3 Fiscal Provisions. The fiscal provisions of the Management Fee are set forth in Exhibit "B," attached hereto and incorporated herein by this reference. Authority shall have no obligation to pay the Management Fee set forth in Exhibit "B" until Contractor has incurred such expenses. The Management Fee shall be calculated on a prorated basis as positions are filled and/or vacated, based on the hourly rate for the position plus a percentage of costs (benefits and expenses) not to exceed 35%.

6.1.4 Meet and Confer. In the 90-day period prior to December 16, 2020, and each subsequent December 16, the parties shall meet and confer in good faith regarding the Management Fee paid to Contractor hereunder. If the parties are unable to reach an agreement concerning the Management Fee before the applicable anniversary date, the Management Fee currently in effect will remain in effect until an agreement is reached, subject to possible retroactive adjustment as may be mutually agreed. Any adjustment in the Management Fee shall be in writing and signed by both parties through a formal amendment to this Agreement.

6.1.5 Fair Market Value. The parties hereby acknowledge that the Management Fee set forth herein was negotiated at arm's length without taking into account the value or volume or referrals between the parties, represents the parties' best estimate of fair market value, and covers Contractor's actual cost to provide the services on a fully loaded basis.

6.2 Invoices; Direct Deposit Account. Invoices for payment shall be submitted in a form approved by Authority. Invoices shall be sent to Authority for review and processing on or before the 1st day and 16th day of each month. Contractor shall establish and maintain a direct deposit account with Authority. Authority shall direct deposit the amount of each approved invoice on or before the 5th day and 20th day of each month.

6.3 Taxpayer Identification. To ensure proper tax reporting of the compensation paid under this Agreement, Contractor shall complete, execute and deliver to Authority an IRS Form W-9, attached hereto and incorporated herein as Exhibit "C," which sets forth the correct taxpayer identification number for Contractor. To the extent required by law, Authority shall report all payments to Contractor on IRS Form 1099 and its state law counterpart.

6.4 Maximum Payable. The maximum payable under this Agreement shall not exceed \$10,236,252 for the period December 16, 2018 through December 15, 2020.

7. **Access to Books and Records.** Contractor shall make available, upon written request from Authority or KMC, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement, and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of seven (7) years after the termination or expiration of this Agreement. If Contractor is requested to disclose books, documents or records pursuant to this section for any purpose, Contractor shall notify KMC of the nature and scope of the request, and Contractor shall make available, upon written request of KMC, all such books, documents or records.

8. **Anti-referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Contractor or Authority and KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

9. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

10. **Authority to Incur Financial Obligation.** It is understood that Contractor, in its performance of any and all duties under this Agreement, has no right, power or authority to bind Authority or KMC to any agreements or undertakings, except as may be lawfully directed or delegated by the Board of Governors.

11. **Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

12. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within 30 days of such negotiation period, this Agreement shall automatically terminate.

13. **Compliance with Rules and Laws.** Contractor shall comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental authority having either mandatory or voluntary jurisdiction over Authority or KMC, including but not limited to The Joint Commission, and with the Bylaws, rules, regulations and policies of Authority and KMC now in effect or hereafter enacted, each of which is made a part of this Agreement and incorporated herein by this reference.

14. Confidentiality.

14.1 Use and Disclosure Restrictions. Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

14.2 Trade Secrets. The parties acknowledge that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information, which is confidential and proprietary to the party and that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.

14.3 Patient Information. Contractor shall not disclose, and shall ensure that its employees will not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Authority in writing, any patient or medical record information regarding KMC patients, and Contractor shall comply, and shall ensure that its employees will comply, with all federal and state laws and regulations, all rules, regulations and policies of Authority and KMC, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), Subtitle D of the federal HITECH Act (“HITECH Act,” 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations,” 45 C.F.R. Part 160, et seq.), the Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

14.4 Medical Staff and Committee Records. All records, files, proceedings and related information of KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor. Contractor shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by Authority, which may be given or withheld in its sole discretion.

14.5 Business Associate Agreement. By signing this Agreement, the parties hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of Protected Health Information (“PHI”). The parties further

agree to comply with and execute the Business Associate Agreement set forth in Exhibit “D,” attached hereto and incorporated herein by this reference.

14.6 **Ownership of Records.** All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind (“Documents”), in whatever form or format, assembled, prepared or utilized by Contractor during and in connection with this Agreement shall remain the property of Authority at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to Authority all such Documents, which have not already been provided to Authority in such form or format, as Authority deems appropriate. Such Documents shall be and will remain the property of Authority without restriction or limitation. Contractor may retain copies of the above-described Documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Authority.

14.7 **Non-disparagement.** Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any email, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party’s business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party.

15. **Conflict of Interest.** Contractor covenants that it has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof. Contractor shall complete and file and shall require any other person doing work under this Agreement to complete and file a “Statement of Economic Interest” with Authority disclosing Contractor’s or such other person’s financial interests.

16. **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

17. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed

against one party in favor of the other. Contractor and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

18. **Corporate Compliance Program.** Contractor shall comply with Authority's corporate compliance program. Contractor shall cooperate with any corporate compliance audits, reviews and investigations that relate to Contractor and/or any of the services provided by Contractor under this Agreement. Subject to request by Authority, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to the services provided by Contractor under this Agreement. Contractor and its employees shall participate in compliance training and education as reasonably requested by Authority.

19. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

20. **Dispute Resolution.** In the event of any dispute between Contractor and Authority arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within 45 days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, Section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court.

21. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the "Federal health care programs") and/or present on the exclusion database of the Office of the Inspector General ("OIG") or the Government Services Administration ("GSA"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

22. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

23. **Governing Law; Venue.** This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the state of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction. Any dispute between the parties shall be brought before the Superior Court, County of Kern, California, which shall have jurisdiction over all such claims.

24. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the services, other than proceedings or disputes between the parties to this Agreement. Such cooperation between the parties shall not operate as a waiver of the attorney-client privilege or the attorney work-product doctrine.

25. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification (8 U.S.C. § 1324). Contractor agrees to indemnify, defend, and hold harmless Authority, its officers, directors, employees and agents, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

26. **Indemnification and Hold Harmless.** Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, officers, members, shareholders, partners, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, officers, members, shareholders, partners, employees or agents.

27. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be in fact and law an independent contractor and not an agent or employee of Authority. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to Authority under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety,

welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, state or local, and compliance with any and all other laws regulating employment.

28. **Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit "E," attached hereto and incorporated herein by this reference.

29. **Liability of Authority.** The liabilities or obligations of Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Authority and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

30. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

31. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

32. **Non-appropriation.** Authority reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Contractor, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Contractor will be given 30 days' prior written notice in the event that Authority requires such an action.

33. **Non-collusion Covenant.** Contractor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the letting of this Agreement with Authority. Contractor has received from Authority no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

34. **Nondiscrimination.** Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.

35. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Contractor. Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.

36. **Notices.** Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Contractor:

Meridian Healthcare Partners, Inc.
3511 Union Avenue
Bakersfield, California 93306
Attn: Its President

Notice to Authority:

Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn: Chairman, Board of Governors

37. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

38. **Sole Agreement.** This Agreement, including all exhibits hereto, contains the entire agreement between the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

39. **Survival.** The provisions of sections 7 (Access to Books and Records), 10 (Authority to Incur Financial Obligation), 14 (Confidentiality), 18 (Corporate Compliance Program), 20 (Dispute Resolution), 23 (Governing Law; Venue), 24 (Litigation Cooperation), 26 (Indemnification and Hold Harmless), 27 (Independent Contractor), 28 (Insurance), 29 (Liability of Authority), 36 (Notices), and 41 (Effect of Termination) shall survive termination or expiration of this Agreement.

40. **Termination.**

40.1 **Termination with Mutual Agreement.** The parties may terminate this Agreement upon mutual written consent with notice of not less than 18 months.

40.2 Termination with Cause. Either party may terminate this Agreement in the event of a material breach by the other; provided, however, the termination for the breach of this Agreement shall not become effective unless and until the party not in default, has given the other party written notice of breach, which notice shall state the general nature of the breach, and the party allegedly in default will thereafter have a period of 15 days following the giving of said notice in which to remedy the default to the reasonable satisfaction of the other party. If the alleged default is of the kind that cannot be cured within 15 days, then the party allegedly in default will have an additional 30 days in which to remedy the breach as long as such party is acting in good faith and using diligent efforts to remedy such breach throughout the cure period.

40.3 Immediate Termination. Notwithstanding the foregoing, Authority shall have the right to terminate this Agreement effective immediately after giving written notice to Contractor for any of the following reasons: (i) the failure of Contractor to cure a default within the time allowed in paragraph 40.2; (ii) the unwillingness of CEO to perform all, or substantially all, of the duties of Chief Executive Officer, which failure persists for five (5) business days after written notice to CEO (excluding authorized absences); (iii) the filing for bankruptcy or other creditor protection by Contractor or Contractor ceases to function as an ongoing business; (iv) failure or neglect of CEO to properly and timely perform the duties of Chief Executive Officer as set forth in this Agreement; (v) Contractor engages in acts which confer improper personal benefit upon any employee of Contractor; (vi) Contractor advises Authority or KMC in a manner that is contrary to the public interest or Contractor engages in conduct that is not in the best interest of Authority or KMC; (vii) attempts on the part of Contractor to secure personally any profit in connection with any transaction entered into on behalf of Authority or KMC; (viii) violation by Contractor of any federal, state, or local laws or regulations to which Authority or KMC is subject; (ix) insubordination of CEO or disloyalty by CEO or Contractor, including without limitation, aiding an Authority or KMC competitor; (x) failure of Contractor to cooperate fully in any Authority investigation; (xi) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC; (xii) negligence or misconduct in the performance of a duty by Contractor, including failure to follow the reasonable directions of the Board of Governors; (xiii) commission of any unlawful or intentional act by CEO or Contractor which would be detrimental to the reputation, character or standing of Authority or KMC; (xiv) conviction of CEO of a felony offense or crime, or plea of “guilty” or “no contest” to a felony offense; (xv) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; (xvi) the issuance of a final order of any governmental agency or court that has competent jurisdiction over the parties, which order requires the termination of this Agreement; or (xvii) the loss or threatened loss of KMC’s ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

40.4 Authority to Terminate. Any action by Authority to terminate this Agreement shall require a simple majority vote of the Board of Governors.

41. **Effect of Termination.**

41.1 **Obligations.** Except as otherwise provided in this section, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement. Notwithstanding the foregoing, each party understands and agrees that termination of this Agreement shall not release or discharge the parties from any obligation, debt or liability, which shall have previously accrued and remains to be performed upon the date of termination.

41.2 **Vacate Premises.** Upon expiration or earlier termination of this Agreement, Contractor shall immediately vacate KMC, removing at such time any and all personal property of Contractor. Authority may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

41.3 **No Interference.** Following the expiration or earlier termination of this Agreement, Contractor shall not do anything or cause any person to do anything that might interfere with any efforts by Authority to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between Authority and any provider that may replace Contractor.

41.4 **No Hearing Rights.** In the event Authority exercises its right to terminate this Agreement pursuant to section 40, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to Authority or KMC employees.

42. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

MERIDIAN HEALTHCARE PARTNERS, INC.

By _____
Russell V. Judd
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT "A"
DESCRIPTION OF SERVICES
Meridian Healthcare Partner, Inc.

1. CEO will be accountable to the Board of Governors. The general duties and expectations of CEO and the position are as follows:
 - Plan, direct and manage the current operations, future growth and program development of KMC while ensuring responsible use of fiscal, human and physical resources
 - Provide leadership in the day-to-day operations and administration of KMC, as well as planning and developing policies and programs for the administration and management of KMC
 - Represent the interests of KMC and the Authority in the development of public hospital funding for indigent care. Maintain communications with appropriate governmental agencies and hospital industry groups. Keep the Board of Governors apprised of administrative and political landscape regarding public hospital financing. Help develop political strategies that can be supported by the Board of Governors and hospital administration
 - Maintain a cooperative and productive relationship with the KMC Medical Staff
 - Provide leadership to the Chief Financial Officer in development of financial reporting and controls necessary to meet new public hospital funding policies
 - Improve billing, accounting and internal control systems to assure efficient management of hospital funds
 - Maintain active involvement in and oversight of the administration of all departments at KMC, including personnel management and internal controls for each of the clinical departments
 - Continue to supervise medical quality control to minimize risk and maximize patient outcomes
 - Facilitate communication between the Board of Governors, KMC administration, KMC Medical Staff and all other stakeholders
 - Develop goals and objectives for KMC, in conjunction with the Board of Governors
 - Perform those duties set forth in the Bylaws and in policy statements of the Board of Governors
 - Ensure KMC delivers high quality, cost effective care and coordinate the development of services and facilities to fulfill KMC's mission
 - Undertake the following based on (i) the financial stability of Authority, (ii) market conditions, or (iii) the request of the Board of Governors:
 - Determine what services are being provided by KMC that are not required to meet legal obligations
 - Prepare a pro forma financial analysis for each department, including profitability by sources of revenue, function and patient source
 - Perform an analysis of functional areas taking into consideration all competitive factors in the market, market growth projections, and sources of reimbursement

- Conduct strategic planning sessions within each department, allowing management and staff the opportunity for input
 - Perform population based analysis of health care needs and compare availability of services to those needs
 - Identify opportunities for KMC to fulfill the unmet needs both for new services and to increase access to care; this includes the expected reimbursement/profitability of the recommended opportunities
 - Evaluate KMC's existing capability and capacity, and project or approximate resource requirements necessary to expand scope of services
 - Evaluate impact of expanded services on reimbursement from Medi-Cal and other payers
 - Review KMC's sources of funding and identify strategies for coping with the changing market place
2. Contractor shall review the process for CEO appointment and succession planning set forth in Exhibit "A-1," attached hereto and incorporated herein by this reference, with the Board of Governors at least annually, or more frequently if requested.

[Intentionally left blank]

Exhibit "A-1"
CEO Appointment and Succession Plan

1. CEO Appointment. Contractor shall engage or employ a competent and experienced individual to serve as Chief Executive Officer ("CEO"), subject to the provisions of Title 2, Chapter 2.170 of the Kern County Code of Ordinances.

2. CEO Succession Plan. Contractor shall develop and have a CEO succession plan in place. Contractor's succession plan must: (a) recommend and identify a CEO Candidate ("Candidate") to succeed the CEO; (b) have a Candidate identified at all times; and (c) develop a training and evaluation program to prepare the Candidate for the CEO role. The CEO training and evaluation program shall:
 - i. Describe the necessary CEO qualifications, skills, and leadership attributes;
 - ii. Evaluate the Candidate's necessary qualifications, skills, and attributes;
 - iii. Establish the Candidate's baseline qualifications, skills, and attributes;
 - iv. Identify the Candidate's areas for improvement;
 - v. Develop an action plan for the Candidate to improve in the necessary areas;
 - vi. Provide for semi-annual reviews of the Candidate; and
 - vii. Present reviews and status to the Board of Governors ("Board").

3. Promotion of CEO Candidate to CEO Role. Contractor shall provide 12 months' notice to promote the Candidate to CEO or as otherwise mutually agreed upon between the Board and Contractor. The 12 months' notice shall include a plan ensuring the Candidate is fully prepared for the CEO role. Within 90 days from the notice to promote the Candidate, the Board shall either: (a) provide written notice of the Board's acceptance of the recommendation to promote the Candidate to the CEO role; or (b) provide written notice to Contractor that the Candidate is not accepted. Upon providing written notice that the Candidate is not accepted, the Board and Contractor shall work together in good faith to develop a mutually agreeable, written plan to replace the CEO with an individual provided by Contractor under the Agreement with Contractor. Should no such plan be mutually agreed to within six (6) months of written notice that the Candidate is not accepted, then the parties will agree to terminate the Agreement under paragraph 40.1 of the Agreement, triggering the 18-month notice period referred to in paragraph 40.1.

4. Health Issue or Other Unique/Exceptional Condition. If a health issue or other unique or exceptional condition makes it impossible for the current CEO to continue to serve, the Board shall appoint the Candidate as Interim CEO for a period of six (6) months ("Interim Appointment Period"). During the Interim Appointment Period, the Board shall determine if the Candidate is prepared and qualified for appointment as CEO. The Interim Appointment Period may be extended for an additional six (6) months, as mutually agreed

upon by Contractor and the Board (“Extended Interim Appointment Period”). If the Board determines that the candidate is not qualified for appointment as permanent CEO, then, no later than the expiration of the Interim Appointment Period or Extended Interim Appointment Period, the parties will agree to terminate the Agreement under paragraph 40.1 of the Agreement, triggering the 18-month notice period referred to in paragraph 40.1.

5. This Exhibit may be changed from time to time by the Board. Any such changes shall be in writing and signed by both parties through a formal amendment to the Agreement.

[Intentionally left blank]

EXHIBIT "B"
Estimated Allocation of Management Fee
Meridian Healthcare Partner, Inc.

Category	Effective Date	
	12/16/2018	12/16/2019
Estimated Salaries	\$2,976,574	\$3,066,261
Estimated Benefits (retirement, health and dental insurance, etc.)	\$819,785	\$844,161
Estimated Insurance and Taxes (workers' compensation, payroll, liability, etc.)	\$419,396	\$431,926
Estimated Business Expenses (legal, accounting, professional fees, travel etc.)	\$424,729	\$437,420
Estimated Operation Fee	\$402,000	\$414,000
Annual Total	\$5,042,484	\$5,193,768

Note: Allocation of funds are approximate and may have variance based upon associated risks and changes in business operations.

EXHIBIT "C"

IRS FORM W-9

EXHIBIT "D"
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("**Covered Entity**") and Meridian Healthcare Partners, Inc. ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of December 16, 2018 (the "**Effective Date**").

RECITALS

WHEREAS, Covered Entity is a "Covered Entity" as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, ("**HIPAA**"), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services ("**Secretary**"), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 ("**HIPAA Rules**"); and

WHEREAS, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information ("**PHI**"); and

WHEREAS, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the "**HITECH Act**") and its implementing regulations and guidance issued by the Secretary; and

WHEREAS, the Privacy and Security Rules (defined below) require Covered Entity and Business Associate to enter into a BAA that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

1.1 "**Breach**" shall have the meaning given under [45 C.F.R. § 164.402](#).

1.2 **“Breach Notification Rule”** shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

1.3 **“Designated Record Set”** shall have the meaning given such term under [45 C.F.R. § 164.501](#).

1.4 **“Disclose”** and **“Disclosure”** mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

1.5 **“Electronic PHI”** or **“e-PHI”** means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

1.6 **“Protected Health Information”** and **“PHI”** mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or 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; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

1.7 **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

1.8 **“Security Rule”** shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.

1.9 **“Services”** shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the **“Underlying Agreement”**), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in [45 C.F.R. § 160.103](#).

1.10 **“Subcontractor”** shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

1.11 **“Unsecured PHI”** shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

1.12 “Use” or “Uses” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

1.13 “Workforce” shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA or the HITECH Act, as applicable.

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity.

2.2 Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than 24 hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice

provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

2.3.3 Data Breach Notification and Mitigation under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General;

(iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

2.4 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

2.5 Use of Subcontractors. Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within 15 days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

2.7 Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within 15 days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

2.8 Accounting. Within 30 days of receipt of a request from Covered Entity or an Individual for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within five (5) days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

2.9 Delegated Responsibilities. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

2.10 Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

2.11 Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

2.12 Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

3.1.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

3.1.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

3.1.3 In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive

communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

3.1.4 Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.

3.1.5 Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

ARTICLE IV TERM AND TERMINATION

4.1 Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

4.2 Termination of Underlying Agreement.

4.2.1 A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

4.2.2 Covered Entity may terminate the Underlying Agreement, 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 Rules 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 Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

4.3 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

4.3.1 Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within 10 business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon 30 calendar days written notice to Business Associate; or

4.3.2 Upon 30-calendar days' written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information upon Termination or Expiration.

4.4.1 Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.

4.4.2 If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

**ARTICLE V
MISCELLANEOUS**

5.1 Regulatory References. A reference in this BAA to a section or other part of HIPAA, the HIPAA Rules, or the HITECH Act means, as of any point in time, the section or part as it may be amended or in effect at such time.

5.2 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.

5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

5.4 Headings. The headings of the paragraphs and sections of this BAA are inserted solely for convenience of reference and are not a part or intended to govern, limit or aid in the construction of any term or provision hereof.

5.5 Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

5.6 Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

5.7 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA 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 claim of violation of the HIPAA or other applicable laws relating to privacy or security.

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

5.9 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and

of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

5.11 Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; 24 hours following deposit with a bonded courier or overnight delivery service; or 72 hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn: Chairman, Board of Governors

Business Associate's Notice Address:

Meridian Healthcare Partners, Inc.
3511 Union Avenue
Bakersfield, California 93306
Attn: Its President

5.13 Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent Consultant and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Business Associate obligations under this BAA.

5.14 Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.10 of this BAA shall

survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

5.15 Interpretation. Any ambiguity in this BAA shall be interpreted to permit the Parties to comply with HIPAA, the HITECH Act, and the HIPAA Rules.

5.16 Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state. Any dispute between the Parties shall be brought before the Superior Court, County of Kern, California, which shall have jurisdiction over all such claims.

5.17 Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.

5.18 Assignment and Delegation. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.

5.19 Disclaimer. Neither Party represents or warrants that compliance by the other Party with this BAA, HIPAA, the HIPAA Rules, or the HITECH Act will be adequate or satisfactory for the other Party's own purposes. Each Party is solely responsible for its own decisions regarding the safeguarding of PHI.

5.20 Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or Consultants may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or Consultants to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

5.21 Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

[Signatures follow on next page]

The Parties hereto have executed this BAA as of the Effective Date.

COVERED ENTITY:

The Kern County Hospital Authority on
behalf of Kern Medical Center

BUSINESS ASSOCIATE:

Meridian Healthcare Partners, Inc.

Title: Chairman, Board of Governors

Date: _____

Title: Its President

Date: _____

EXHIBIT "E" **INSURANCE**

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless Authority has expressly waived such insurance in writing. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

Authority reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers' Compensation and Employers Liability Insurance:

- (a) Required if Contractor has employees. If Contractor currently has no employees, Contractor's written confirmation of such will be required before execution of this Agreement. If Contractor engages any employees during the term of this Agreement or any extensions thereof, Contractor agrees to obtain the specified Workers' Compensation and Employers Liability insurance.
- (b) Workers' Compensation insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Authority for all work performed by Contractor, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.

- (c) If Contractor has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.
- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
- (e) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to Authority as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by Authority.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between Authority and Contractor and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability Insurance (Errors and Omissions):

- (a) Professional Liability Insurance (Errors and Omissions) appropriate to Contractor's profession.

- (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
 - (c) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
 - (d) Required Evidence of Coverage: Certificate of Insurance.
5. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.
6. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.
7. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
 - (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work*.
 - (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of the contract work.
8. Documentation:
- (a) The Certificate of Insurance must include the following reference: "**Agreement for Professional Services.**"
 - (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
 - (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.

- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
 - (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
 - (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.
9. Policy Obligations: Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
10. Primary Coverage: For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Authority, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its officers, directors, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

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**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(j)(2)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on February 20, 2019, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

 X Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –

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**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on February 20, 2019, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organizations: Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6)

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on February 20, 2019, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

 X Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –