



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, August 21, 2019

11:30 A.M.

BOARD TO RECONVENE

Board Members: Alsop, Berjjs, 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. In addition, 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 the American Heart Association Stroke Gold Plus Achievement Award presented to Kern Medical Center –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on July 17, 2019 –
APPROVE

CA

- 5) Proposed Resolution in the matter of compliance with Health and Safety Code Section 130066 (AB 2190) regarding the deadline for substantial compliance the seismic safety regulations and standards described in Health and Safety Code Section 130065 –
APPROVE; ADOPT RESOLUTION

CA

- 6) Proposed retroactive Allied Health Education Program Agreement with Kern Community College District, an independent contractor, containing non-standard terms and conditions, for clinical laboratory instruction of students at Kern Medical Center and its affiliated clinics, from July 1, 2019 through June 30, 2022 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Agreement with Cantu Management Group, Inc., an independent contractor, for Chief Financial Officer and healthcare consulting and financial management services from September 1, 2019 through August 31, 2023, in an amount not to exceed \$7,200,000 for the period September 1, 2019 through August 31, 2021 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed request to close Kern County Hospital Authority fiduciary fund (Fund 42930) within the Financial Management System of the County of Kern –
APPROVE; ADOPT RESOLUTION; AUTHORIZE CHIEF FINANCIAL OFFICER TO DIRECT KERN COUNTY AUDITOR-CONTROLLER-COUNTY CLERK TO CLOSE FUND 42930 AND TRANSFER ANY REMAINING FUNDS TO KERN COUNTY HOSPITAL AUTHORITY

CA

- 9) Proposed retroactive Amendment No. 1 to Agreement 011-1019 with PNC Bank, National Association (PNC Bank), for a revolving line of credit for the period March 1, 2019 through February 28, 2021, to permit an increase in the principal amount to \$50,000,000 at any time within the two-year term of the Agreement, effective July 1, 2019, 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 FIRST AMENDMENT CREDIT AGREEMENT AND PROMISSORY NOTE, 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

CA

- 10) Proposed retroactive Amendment No. 1 to Agreement 01419 with Kaufman, Hall & Associates, LLC, an independent contractor, for treasury services implementation support for the period February 1, 2019 through July 31, 2019, extending the term for a period of four months from August 1, 2019 through November 30, 2019, and increasing the maximum payable by \$120,600, from \$193,500 to \$314,100, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Resolution in the matter of revising the extension of excess medical professional liability coverage for Kern Medical Center employed and independent contractor physicians, effective August 21, 2019 –
APPROVE; ADOPT RESOLUTION

CA

- 12) Proposed Agreement with Pacific Gynecologic Specialists, an independent contractor, for professional medical services in the Department of Obstetrics and Gynecology from September 1, 2019 through August 31, 2021, in an amount not to exceed \$800,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 13) Kern County Hospital Authority Chief Financial Officer report –
RECEIVE AND FILE

- 14) Kern County Hospital Authority Chief Executive Officer report –
RECEIVE AND FILE

CA

- 15) Claims and Lawsuits Filed as of July 31, 2019 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 16) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 17) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Eric vanSonnenberg, M.D. v. County of Kern, et al., Kern County Superior Court Case No. BCV-15-100859 TSC –
- 18) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 v. County of Kern, et al., Public Employment Relations Board Case No. LA-CE-1084-M –
- 19) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Government Code Section 54956.9(d)(2), (e)(2).) Number of cases: Two (2) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs –
- 20) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer
(Government Code Section 54957) –
- 21) 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, SEPTEMBER 18, 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. Reasonable efforts will be made to 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.

15) CLAIMS AND LAWSUITS FILED AS OF JULY 31, 2019 –
RECEIVE AND FILE

- A) Claim in the matter of Adria Ottoboni, M.D.
- B) Summons and Complaint in the matter of Delia Rodriguez v. John Schlaerth M.D., et al., Kern County Superior Court Case No. BCV-19-100854



**American Heart Association
Stroke - 2019 Get With the Guidelines**

GOLD PLUS QUALITY ACHIEVEMENT AWARD

**Katayoun Sabetian, MD – Neurologist,
Stroke Program Coordinator**

Kiron Thomas, MD – Interventional Neurologist

Jina Pappas, RN – Stroke Program Coordinator

HOW? – Meet Criteria for Many Measures

- Med Administration
 - ✓ TPA, Antithrombotics, VTE prophylaxis, anticoagulation, statins
- Lab/Radiology testing
- Smoking Cessation
- Dysphagia screening
- Education
- Rehab Assessment
- Stroke Scale Assessment for severity

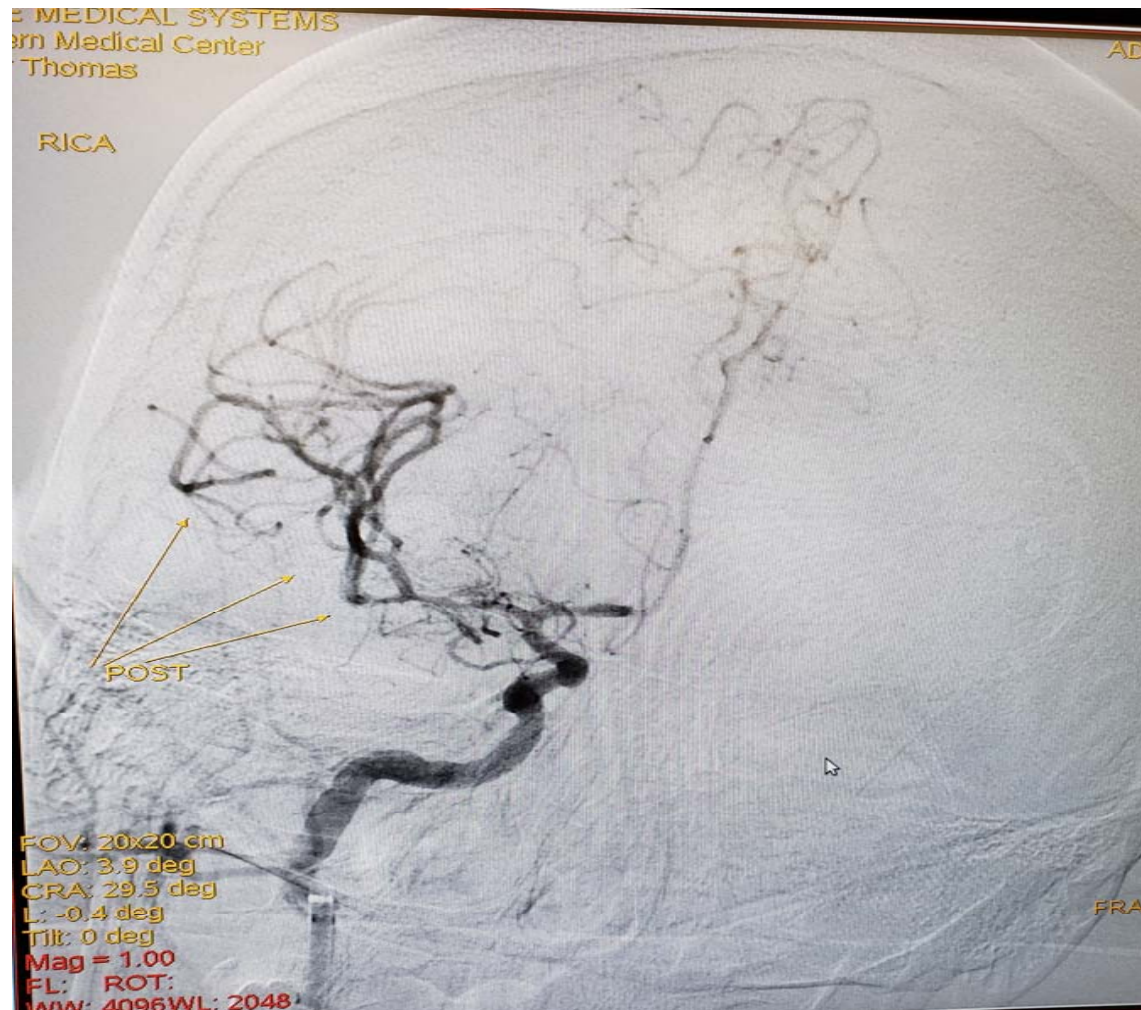
A Success Story

- 57 year old female
- Presented: Left sided weakness/slurred speech
- TPA at outside facility for Ischemic Stroke
- No improvement
- Transferred to Kern Medical
- Dr. Thomas performed thrombectomy (clot removal)
- Weakness/slurred speech resolved
- W/O procedure – likely discharge to skilled care

A Success Story



A Success Story



Thank you!

Questions?





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, July 17, 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, Alsop-McLaughlin denotes Director Alsop made the motion and Director McLaughlin seconded the motion.

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" ARE 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. In addition, 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

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))

NO ONE HEARD

RECOGNITION

- 2) Presentation by the Chief Executive Officer of service awards to five Kern Medical Center employees with 25 and 35 years of service –
MADE PRESENTATION; DIANE NICHOLLS, RN, HEARD

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for Kern County Hospital Authority Board of Governors regular meeting on June 19, 2019 –
APPROVED
Brar-Pelz: All Ayes

CA

- 5) Proposed Agreement with Tom Chao, M.D., a contract employee, for professional medical services in the Department of Surgery from September 3, 2019 through September 2, 2022, in an amount not to exceed \$3,000,000, plus applicable benefits –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 039-2019
Brar-Pelz: All Ayes

CA

- 6) Proposed Agreement with Everardo Cobos, M.D., a contract employee, for professional medical services in the Department of Medicine from August 8, 2019 through August 7, 2022, in an amount not to exceed \$1,536,474, plus applicable benefits –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 040-2019
Brar-Pelz: All Ayes

CA

- 7) Proposed Amendment No. 2 to Agreement 161-2016 with Valley Children's Medical Group, Inc., an independent contractor, for on-site consultation services to pediatric patients for the period August 2, 2015 through August 1, 2019, extending the term one year from August 2, 2019 through August 1, 2020, and increasing the maximum payable by \$165,500, from \$642,000 to \$807,500, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 041-2019
Brar-Pelz: All Ayes

CA

- 8) Proposed retroactive Amendment No. 2 to Agreement 06816 with Health Advocates, LLC, an independent contractor, for accounts receivable and financial services for the period July 1, 2016 through June 30, 2020, extending the term for two years from July 1, 2020 through June 30, 2022, and increasing the maximum payable by \$10,800,000, from \$3,000,000 to \$13,800,000, to cover the term, effective July 1, 2019 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 042-2019
Brar-Pelz: All Ayes

CA

- 9) Proposed retroactive Amendment No. 5 to Agreement 14818 with Healthcare Performance Group, Inc., an independent contractor, for professional consulting services related to the Cerner Millennium project for the period May 7, 2018 through December 20, 2019, increasing the maximum payable by \$48,088, from \$1,597,616 to \$1,645,704, to cover payment for additional services, effective June 3, 2019 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 043-2019
Brar-Pelz: All Ayes

CA

- 10) Proposed Amendment No. 1 to Agreement 30718 with JDM Solutions, Inc., an independent contractor, for professional consulting services related to the Cerner Millennium project for the period November 21, 2018 through July 31, 2021, increasing the maximum payable by \$1,289,600, from \$249,500 to \$1,539,100, to cover payment for additional services, effective July 17, 2019 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 044-2019
Brar-Pelz: All Ayes

CA

- 11) Proposed retroactive Affiliation Agreement with The Regents of the University of Colorado, an independent contractor, containing nonstandard terms and conditions, for training of pharmacy students from July 1, 2019 through June 30, 2024 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 045-2019
Brar-Pelz: All Ayes

CA

- 12) Proposed retroactive Agreement with the State of California, Department of State Hospitals, an independent contractor, for the provision of health care services from June 29, 2018 through July 31, 2019 – APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 046-2019
Brar-Pelz: All Ayes

CA

- 13) Proposed retroactive Agreement with Kroll Cyber Security, LLC, an independent contractor, containing nonstandard terms and conditions, for information security and computer forensics services, in an amount not to exceed \$50,000, effective June 27, 2019 –
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT
047-2019
Brar-Pelz: All Ayes

CA

- 14) Proposed appointment of Arman Froush, D.O., as Chair, Department of Radiology –
RATIFIED APPOINTMENT
Brar-Pelz: All Ayes
- 15) Proposed update regarding the Valley Fever Institute at Kern Medical Center –
MADE PRESENTATION
- 16) Proposed election of officers to the Kern County Hospital Authority Board of Governors to include Russell Bigler, Chair, Philip McLaughlin, Vice-Chair, and Amir Berjis, M.D., Secretary/Treasurer, terms to expire June 30, 2021 –
ELECTED OFFICERS
Sistrunk-Pelz: All Ayes
- 17) Kern County Hospital Authority Chief Financial Officer report –
RECEIVED AND FILED
McLaughlin-Sistrunk: All Ayes
- 18) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED
Berjis-Brar: All Ayes

CA

- 19) Claims and Lawsuits Filed as of June 30, 2019 –
RECEIVED AND FILED
Brar-Pelz: All Ayes

ADJOURNED TO CLOSED SESSION
Brar-Sistrunk

CLOSED SESSION

- 20) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW

- 21) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 22) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – SEE RESULTS BELOW
- 23) 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

RECONVENED FROM CLOSED SESSION

Alsop-McLaughlin

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 20 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR SISTRUNK), THE BOARD APPROVED ALL PROVIDERS RECOMMENDED FOR REAPPOINTMENT; NO OTHER REPORTABLE ACTION TAKEN

Item No. 21 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 22 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 23 concerning 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

ADJOURNED TO WEDNESDAY, AUGUST 21, 2019, AT 11:30 A.M.

Berjis

/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**

August 21, 2019

Subject: Proposed Resolution in the matter of compliance with Health and Safety Code Section 130066 (AB 2190) regarding the deadline for substantial compliance the seismic safety regulations and standards described in Health and Safety Code Section 130065

Recommended Action: Approve; Adopt Resolution

Summary:

The Alfred E. Alquist Seismic Safety Act (Health and Safety Code Section 130000 et seq.) establishes a seismic safety building standards program under the jurisdiction of Office of Statewide Planning and Development (OSHPD) for hospitals built on or after March 7, 1973. The Act was initiated because of the loss of life incurred due to the collapse of hospitals during the Sylmar earthquake of 1971. Assembly Bill 2190 amended the Act in 2018 to require the owner of an acute care inpatient hospital whose building does not substantially comply with the seismic safety regulations or standards described in Health and Safety Code Section 130065 to submit to OSHPD an attestation that the governing body of that hospital is aware that the hospital building is required to meet the January 1, 2030, deadline for substantial compliance with those regulations and standards. This requirement applies to all acute care inpatient hospitals where buildings are rated SPC-1 or SPC-2. Kern Medical has one building rated SPC-1 and three buildings rated SPC-2. The deadline to submit the attestation is December 31, 2019.

Kern Medical recommends your Board adopt the attached proposed Resolution attesting that your Board is aware that one or more Kern Medical buildings are required to meet the January 1, 2030 deadline for substantial compliance with the seismic safety regulations and standards described in Health and Safety Code Section 130065.¹

¹ Health and Safety Code Section 130065 states: No later than January 1, 2030, owners of all acute care inpatient hospitals shall either: (a) demolish, replace, or change to non-acute care use all hospital buildings not in substantial compliance with the regulations and standards developed by OSHPD pursuant to the Act; or (b) seismically retrofit all acute care inpatient hospital buildings so that they are in substantial compliance with the regulations and standards developed by OSHPD pursuant to the Act.

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

In the matter of:

Resolution No. 2019-___

**COMPLIANCE WITH HEALTH AND
SAFETY CODE SECTION 130066**

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 21st day of August, 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 Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Health & Saf. Code, § 130000 et seq.) (the "Act") was adopted to avoid the loss of life and the disruption of operations and the provision of emergency medical services that may result from structural damage sustained to hospitals resulting from an earthquake; and

(b) A series of amendments have been made to the Act since its adoption to handle additional safety concerns, such as addressing nonstructural components, and implementation issues, such as required progress reports and deadline extensions; and

(c) One such amendment, Assembly Bill 2190 (AB 2190), added Sections 130062 and 130066 to the Health and Safety Code, effective January 1, 2019; and

(d) Health and Safety Code Section 130066 states: Before January 1, 2020, the owner of an acute care inpatient hospital whose building does not substantially comply with the seismic safety regulations or standards described in [Health and Safety Code] Section 130065 shall submit to the [Office of Statewide Planning and Development] an attestation that the board of directors of that hospital is aware that the hospital building is required to meet the January 1, 2030, deadline for substantial compliance with those regulations and standards; and

(e) Health and Safety Code Section 130065 states, in relevant part, the following: No later than January 1, 2030, owners of all acute care inpatient hospitals shall either: (a) demolish, replace, or change to non-acute care use all hospital buildings not in substantial compliance with the regulations and standards developed by the [Office of Statewide Planning and Development] pursuant to the [Act]; or (b) seismically retrofit all acute care inpatient hospital buildings so that they are in substantial compliance with the regulations and standards developed by the [Office of Statewide Planning and Development] pursuant to the [Act]; and

(f) Health and Safety Code Section 130066 applies to all acute care inpatient hospitals where buildings are rated SPC-1 or SPC-2; and

(g) Kern Medical Center has one or more buildings with performance ratings less than SPC-3 (one building with SPC-1 rating; three buildings with SPC-2 rating).

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 attests it is aware that one or more Kern Medical Center buildings are required to meet the January 1, 2030 deadline for substantial compliance with the seismic safety regulations and standards described in Health and Safety Code Section 130065.

3. The provisions of this Resolution shall be effective, in force, and operative as of the 21st day of August, 2019.

4. The Authority Board Coordinator shall provide copies of this Resolution to the following prior to January 1, 2020:

Kern Medical Center
Legal Services Department
SeismicComplianceUnit@oshpd.ca.gov



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

August 21, 2019

Subject: Proposed Retroactive Allied Affiliation Health Education Program Agreement with the Kern Community College District

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an affiliation agreement with the Kern Community College District for placement of nursing students completing registered nurse training. This affiliation agreement will provide Kern Medical with greater opportunity to recruit much-needed registered nurses upon completion of their training. This agreement will be retroactive to July 1, 2019.

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel, due to a limitation of liability that extends to both the indemnification and insurance terms contained in the Agreement. Efforts were made to negotiate the deletion of this offending provision to no avail. In mitigation, the Agreement does require the limitation of liability being extended to a limit of ten (10) million dollars.

Therefore, it is recommended that your Board approve the Agreement with Kern Community College District for placement of nursing students for a term of three (3) years and authorize the Chairman to sign.

**ALLIED HEALTH EDUCATION PROGRAM AGREEMENT
KERN COMMUNITY COLLEGE DISTRICT –
KERN COUNTY HOSPITAL AUTHORITY & KERN MEDICAL CENTER Q STREET
CLINICS**

This Allied Health Education Program Agreement (“Agreement”) is between the KERN COMMUNITY COLLEGE DISTRICT, a political subdivision of the State of California, on behalf of Bakersfield College, Porterville College and Cerro Coso Community College (“District”), and the party whose legal name and status are described in the signature block below (“Agency”).

RECITALS

This Agreement is based on the following facts and understandings of the parties:

- A. District operates curricula in subject areas related to health services (“Allied Health Programs” or “Programs”), which require students to engage in observation and clinical practice at facilities such as those maintained by Agency.
- B. Agency has clinical facilities suitable for the educational needs of District's Allied Health Programs.
- C. It is to the mutual benefit of both parties that students of District Allied Health Programs use the facilities of the Agency for their clinical laboratory learning experience. This Agreement is intended to be the written agreement between the parties related to the services to be provided during the referenced term.

TERMS

Based upon the Recitals and the promises exchanged by the parties in this Agreement, the parties agree as follows:

1. Term.

The term of this Agreement shall commence on **July 1, 2019**, and shall terminate on **June 30, 2022**. Notwithstanding the foregoing either party may terminate this Agreement with at least sixty (60) days prior written notice to the other party, except for the Radiologic Technology Program which must be given six (6) months written notice. Upon the effective date of such termination, all rights and obligations of the parties shall cease and terminate, except that each party shall perform any obligation arising out of an event occurring or circumstances existing prior to the date of termination.

2. Entire Agreement.

This Agreement, including any exhibits or schedules to which it refers, constitutes the final, complete, and exclusive statement of the terms of agreement between the parties pertaining to the subject matter of the Agreement. It supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement.

3. Notices.

Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered by certified or personal service upon the other party at the address listed in the signature block, or to such other address of which either party may notify the other party in writing. Notices to Agency shall be directed to the attention of _____, if to District notices shall be directed to the attention of the Associate Dean of Nursing.

4. Additional Provisions. The attached additional provisions are part of the Agreement and fully incorporated by reference.

AGENCY

Entity Name:

By _____

Signatory Name:

Title:

Address:

Date: _____

DISTRICT

KERN COMMUNITY COLLEGE DISTRICT

By Deborah A. Martin

Signatory Name: Deborah A. Martin

Title: Chief Financial Officer

2100 Chester Avenue, Bakersfield, CA 93301

Date: 7/15/19

ADDITIONAL PROVISIONS OF THIS AGREEMENT

5. District's Responsibilities. District shall do all of the following

- (a) Establish a curriculum for the Programs, and develop and implement a plan of clinical laboratory instruction acceptable to Agency for students enrolled in the Programs.
- (b) Establish and maintain admission requirements designed to ensure that students admitted to the Programs possess the level of physical and emotional health, character, skills, and qualifications necessary to enable them to participate in clinical laboratory education safely and competently. District shall supply Agency, on request, with a written list of requirements for admission to the Programs.
- (c) Certify that each instructor and student participating in Allied Health Programs has complied with the drug/alcohol screening policy of District (**Exhibit A**).
- (d) Certify that each instructor and student has received appropriate orientation to the Agency and has been instructed in occupational exposure to blood borne pathogens and general safety practices and has a signed statement of such instruction on file with District (**Exhibit B**).
- (e) Certify that each instructor and student participating in Allied Health Programs has undergone a criminal background check to include as a minimum, a state and county criminal history investigation and a state sex offender search where the student resides and where the Agency is located. In the event any Student receives an insufficient score, such criminal history identified shall be reported to the Agency prior to the Student's participation in the Program.

District may request further consideration of any Student not receiving a passing score and provide the Agency with sufficient information as to the basis for Student's insufficient score. Agency shall promptly review such request; however, Agency may determine, in Agency's sole discretion acceptance thereof any student.

- (f) Assume primary responsibility for the supervision, control and evaluation of students receiving clinical laboratory education at Agency's facilities, and provide an adequate number of instructors to fulfill this responsibility. In order to ensure that the Programs do not interfere with the orderly operation of Agency's facilities, District shall require each student and instructor participating in the Programs to abide by the program and/or safety-related requests of any person in authority at Agency, to the extent legally permissible.
 - (g) Require each student and instructor to observe applicable regulations established by the Agency relating to dress code, student and faculty photo identification badges, and parking.
 - (h) Assume responsibility for the care and control of all supplies and materials used for the instruction of students at the Agency.
 - (i) Maintain the students' attendance and academic records.
 - (j) Cooperate with the Agency in complying with the requirements of the appropriate professional accrediting or licensing body.
 - (k) The Program director ("Program Director") of the Bakersfield College Radiologic Technology Program will maintain compliance with the regulations as set forth on Exhibit C, attached hereto and incorporated herein.
6. Agency's Responsibilities. Agency shall do all of the following:
- (a) Cooperate with District in developing and implementing a plan of clinical laboratory instruction for students enrolled in the Programs.
 - (b) Permit instructors and students of District to engage in clinical laboratory instruction on its premises pursuant to the plan of instruction developed by District and approved by Agency. Agency shall exercise reasonable supervision and care for District's students at times when District personnel are not present. Agency may cancel or curtail scheduled instruction, or limit or withdraw the use of any of its facilities, whenever it determines that scheduled instruction or the use of its facilities would interfere with its effective operation.
 - (c) Allow instructors and students of District, at their own expense, to use cafeteria and other facilities provided for Agency's personnel.
 - (d) Make available to instructors and students space suitable for educational meetings and storage space for instructional materials. Agency shall not be responsible for the safekeeping of instructional materials.
 - (e) Cooperate with District in complying with the requirements of the appropriate professional accrediting or licensing body, including but not limited to, allowing the Radiologic Health Branch (RHB), to conduct unannounced inspections of the agency as it pertains to the Radiologic Technology Program.
 - (f) Permit Agency's staff to advise and consult on the education of students provided they are able to do so without interfering with normal Agency activities.
-

- (g) Maintain in strictest confidence to the extent allowed by law any health-related and other information pertaining to students of District. Except in response to the order of a court or administrative body of competent jurisdiction or other valid legal process, Agency shall not provide access to or transmit such information to any third parties, nor to employees of Agency who do not have a need to know it, without the express written permission of District. Agency shall defend, indemnify, and hold District harmless from any claims, demands, liability, penalties, and lawsuits arising out of the breach of this obligation.

7. Liaison.

Each of the parties shall designate a person to act as liaison with the other for the purpose of carrying out this Agreement. The persons so designated shall meet from time to time to evaluate and implement the Programs and to exchange information, which shall include changes in the Programs and in the availability of facilities for the instruction of students.

8. Nondiscrimination.

District and Agency shall not discriminate in the assignment and acceptance of students to clinical laboratory placements and care for patients on the basis of race, color, national origin, ancestry, gender, age, religion, marital status, medical condition, or disability or any other bases prohibited by applicable law.

Neither party, nor any officer, agent, employee, or subcontractor of the party shall discriminate in the treatment or employment of any employee, contractor, or student of the other party on any ground prohibited by law, nor shall any of them harass any such person in the course of performing this Agreement based on gender or any other basis prohibited by applicable law.

9. Participation of Students.

- (a) District shall ensure that no student participates in the Programs unless the student:
 - (i) has met the requirements established by District and/or Programs for admission to the Programs;
 - (ii) has undergone a medical examination as specified by District and taken all necessary measures for protecting the health of the student and of others; and
 - (iii) complies with the requirements of this Agreement insofar as they relate to students, including, without limitation, the requirements relating to dress, compliance with rules and regulations, and insurance coverage.
- (b) District shall be responsible for providing any health examination information required by this section upon request, and shall provide Agency's accrediting/licensing body with such evidence as required to confirm that each student participating in the Programs is in a satisfactory state of health. All such requests should be directed to the Office of General Counsel, 2100 Chester Avenue, Bakersfield, CA 93301.
- (c) Agency may withdraw approval of the participation of any student for any lawful reason that it deems adequate; provided that it shall first consult with the District, unless it determines that the continued participation of any student would pose an immediate threat to the quality of patient care at Agency. District shall immediately withdraw from Agency any student for whom

Agency withdraws approval.

- (d) Agency may impose reasonable limits on the number of students who may undergo clinical laboratory experience at any time. These limits may vary according to the nature of the experience.

10. Responsibility for Nursing Care.

If this Agreement relates to the provision of nursing care, responsibility for nursing care and related duties is retained by Agency's nursing service when nursing students and instructors are providing care within a patient care unit.

11. Status of Students.

All students participating in the Programs are learners. They shall not engage in patient care activities without supervision by Agency and District. Students shall not replace Agency's staff, except as may be necessary for students' experience.

12. Independent Contractors.

This Agreement is between independent contractors, and it is not intended to create the relationship of agency, employment, partnership, joint venture, or association between the parties or any of their contractors, agents, or employees, or between the Agency and any student or instructor of District.

13. Indemnification.

Each party agrees to defend, hold harmless, and indemnify the other party (and the other party's officers, employees, students, trustees, agents, successors, and assigns) against all claims, suits, expenses, losses, penalties, fines, costs, and liability whether in contract, tort, or strict liability (including but not limited to personal injury, death at any time, and property damage) arising out of or made necessary by (A) the indemnifying party's breach of the terms of this Agreement, and (B) the act or omission of the indemnifying party, its employees, students, officers, agents, and assigns in connection with the performance of this Agreement.

In the event that any action or proceeding is brought against the other party by reason of any claim or demand discussed in this section, upon notice from other party, the indemnifying party shall defend the action or proceeding at the other party's expense through counsel reasonably satisfactory to the other party. The obligations to indemnify set forth in this section shall include reasonable attorney's fees and investigation costs and all other reasonable costs, expenses, and liabilities from the first notice that any claim or demand is to be made.

The indemnifying party's obligations under this section shall apply regardless of whether the other party (or any of its officers, employees, students, trustees, or agents) are actively or passively negligent, but shall not apply to any loss, liability, fine, penalty, forfeiture, cost, or damage determined by a court of competent jurisdiction to be caused by the sole active negligence or by the willful misconduct of the other party, its officers, employees, trustees, or agents. In no event will the District's liability hereunder exceed a total of \$10,000,000.00.

14. Insurance.

Each party shall obtain, pay for, and maintain in effect during the life of this Agreement the following policies of insurance issued by an insurance company rated not less than A-, VI in Best Insurance Rating Guide and admitted to transact insurance business in California: (A) commercial general liability insurance (including contractual, products, and completed operations coverages, bodily injury, and property damage liability insurance) with single combined limits of not less than \$1,000,000 per occurrence; (B) commercial automobile liability insurance for any auto with combined single limits of liability of not less than \$1,000,000 per occurrence; (C) professional liability insurance (errors and omissions) with a limit of liability of not less than \$1,000,000 per occurrence; and (D) workers compensation insurance as required under state law. Each party agrees to provide written notice to the other party within 30 days of cancellation or material change, or reduction in coverage.

District's liability and workers' compensation coverages shall extend to claims arising out of the act or omission of District's students acting within the course and scope of their participation in the clinical program as described in this Agreement.

Each party shall furnish the other party with a certificate of insurance, listing the insurance coverage(s) noticed above, and required under this section. Upon receipt of a notice of cancellation, change, or reduction in coverage, each party shall immediately provide the other party with a certificate of insurance listing the required new or renewal insurance.

Nothing in this section concerning minimum insurance coverage(s) requirements shall reduce a party's liabilities or obligations under the indemnification provisions of this Agreement.

District shall inform each student of the requirements of this section.

15. Use of Names.

Neither party shall use the name of the other in any advertising materials, or for the solicitation of prospective students, without the prior written approval of the party whose name is to be used.

16. Confidentiality and HIPAA Compliance

- (a) During the term of this Agreement, District may receive from Agency, or may receive or create on behalf of Agency, certain confidential health or medical information ("Protected Health Information" or "PHI"). This PHI is subject to protection under State and Federal law, including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated there under by the U.S. Department of Health and Human Services ("HIPAA Regulations"). District represents that it has in place policies and procedures that will adequately safeguard any PHI it receives or creates, and District specifically agrees, on behalf of itself, its subcontractors, and agents to safeguard and protect the confidentiality of PHI consistent with applicable law, including currently effective provisions of HIPAA and the HIPAA Regulations.
- (b) The parties acknowledge that State and Federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties hereby specifically agree to take such action as is necessary to implement the requirements of HIPAA and HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI.

- (c) For purposes of this section, PHI means any information, whether oral or recorded in any form or medium that:
 - (i) 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, and
 - (ii) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

17. Miscellaneous.

- (a) Amendment. The provisions of this Agreement may be modified only by mutual agreement of the parties. No modification shall be binding unless it is in writing and signed by the party against whom enforcement of the modification is sought.
- (b) Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party entitled to the benefit of the term or condition, but no such waiver shall affect or impair the right of the waiving party to require observance, performance, or satisfaction either of that term or condition as it applies on a subsequent occasion or any other term or condition of this Agreement.
- (c) Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party of this Agreement, nor shall any provision give any third persons any right of subrogation or action against any party to this Agreement.
- (d) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.
- (e) Governing Law. The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of California, excluding any statute which directs the application of the laws of another jurisdiction.
- (f) Authority to Enter Into Agreement. Each party to this Agreement represents and warrants that it has the full power and authority to enter into this Agreement and to carry out the transactions contemplated by it, and has taken all action necessary to authorize the execution, delivery, and performance of the Agreement.
- (g) Compliance with Law. In the course of performing this Agreement, each party shall observe and comply with all applicable federal, state and local laws, regulations, and ordinances now in effect or subsequently enacted.
- (h) Licenses and Permits. Agency represents that Agency's employees who will supervise District's students in their clinical experience under this Agreement are fully licensed, qualified, and competent to provide such supervision.

Exhibit "A"

Kern Community College District Policy Manual Students / Instructional Services

4G Drug and Alcohol Screening for Students in Allied Health Programs

- 4G1 As a condition of admission to any Allied Health Program, with a clinical component, in the Kern Community College District, all students are required to submit to and pass a designated drug and alcohol screen.
- 4G2 If the Kern Community College District has a contractual arrangement with an outside organization and the outside organization requires drug screening of Allied Health Program students in that contractual program, these students must submit to and pass a drug screen.
- 4G3 All Allied Health Program students must sign a statement that they agree to immediate monitored drug and alcohol testing at College expense upon request of a program instructor and/or the director of the program at any time while a student is in the program. Drug and alcohol screening shall be requested whenever there is reasonable suspicion that a student is under the influence of alcohol or drugs.
 - 4G3A Students with verified positive test results for alcohol, any illegal drug, or the abuse of prescribed or over-the-counter medication or mind altering substances will be dropped from the program. Readmission will be contingent upon satisfactory completion of an approved rehabilitation program.
 - 4G3B If a student who has been readmitted after successfully completing a rehabilitation program fails a subsequent drug or alcohol test, the student will be dropped from the program and will be disqualified for readmission.
 - 4G3C All information regarding drug and alcohol testing and resulting rehabilitation will be kept confidential and will be maintained in a file separate from the students' regular file in the office of the director of the program.
- 4G4 Each College shall develop procedures to implement Policy 4G.

Exhibit "B"

KERN COMMUNITY COLLEGE DISTRICT ALLIED HEALTH PROGRAMS

CERTIFICATION OF STUDENT INSTRUCTION IN SAFETY EDUCATION

This is to verify that I have been instructed in the following healthcare safety practices specific to the agency where I am assigned for clinical practice. When applicable, I have shown competency by return demonstration.

SAFETY EDUCATION COMPETENCY CHECKLIST

Security Codes and Procedures:

Cardiopulmonary Resuscitation

Fire

Bomb

Security disaster

Back injury prevention

Infection Control / Blood Borne Pathogens

Chemical Safety / Material Safety Data Sheets

Radiation Safety

Location of Safety Manual, Fire Extinguishers, Evacuation Exits

Unusual Occurrence Reporting

I AGREE to comply with all safety procedures established by each healthcare agency where I am assigned. I understand that non-compliance with safety regulations established by the agency may constitute grounds for dismissal from the agency and/or the Kern Community College District's Allied Health Program.

Print Student's Name

Student's Signature

Date

Instructor's Signature

Date

Exhibit "C"

KERN COMMUNITY COLLEGE DISTRICT ALLIED HEALTH PROGRAMS

Whereas the California Department of Public Health Regulations, CCR Title 17, Division 1, Chapter 5, Subchapter 4.5, Article 1, Section 30415 "Affiliation Consent" states that an affiliate agreement shall include, but not be limited to, the name, signature, and date of signature of the Program Director of the Radiologic Technology Program.

Program Director

Print Name

Date



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

August 21, 2019

Subject: Proposed Agreement with Cantu Management Group, Inc.

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve the attached proposed new Agreement for Professional Services with Cantu Management Group, Inc., for Chief Financial Officer and healthcare consulting and financial management services to the hospital authority and Kern Medical. Cantu has provided such services since February 9, 2015.

The proposed Agreement, which supersedes the existing agreement, is for a term of four years from September 1, 2019 through August 31, 2023, and contains an option to extend the term for two additional terms of two-years each. The financial terms are as follows: Cantu will be paid a monthly management fee for key staff engaged or employed by Cantu. The management fee will be calculated on a prorated basis as positions requested by the hospital authority are filled and/or vacated, based on the hourly rate for the position plus a percentage of costs (benefits and expenses) not to exceed 52%. In the 90-day period prior to September 1, 2022, and each subsequent September 1, the parties have agreed to meet and confer in good faith regarding the management fee paid to Cantu. 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.

Cantu also will be paid a monthly staffing fee for temporary additional staff requested by the hospital authority. The staffing fee will be paid based on the hourly rates set forth in the hospital authority's Standardized Salary Schedule plus a percentage of costs (benefits and expenses) not to exceed 33%.

The compensation paid to Cantu covers all salaries, costs and expenses to provide the services. The maximum payable will not exceed \$7,200,000 for the period September 1, 2019 through August 31, 2021.

The responsibilities of the Chief Financial Officer and the group remain unchanged.

Therefore, it is recommended that your Board approve the Agreement with Cantu Management Group, Inc., and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Cantu Management Group, 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 Cantu Management Group, Inc., a California corporation (“Contractor”), with its principal place of business located at 11420 Privet Place, Bakersfield, California 93311.

**I.
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 financial 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 financial management services including supervision and management of the day-to-day financial operations of KMC (Kern County Agt. #042-2015, dated January 27, 2015, as amended and assigned), for the period February 9, 2015 through February 8, 2021; 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 financial management services, and that Authority should continue to retain Contractor to be the exclusive provider of financial 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. #042-2015 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:

II.
TERMS AND CONDITIONS

1. **Term.** The term of this Agreement shall be for a period of four (4) years, commencing as of September 1, 2019 (the “Commencement Date”), and shall end August 31, 2023, 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 two (2) additional terms of two (2) years each, provided that Authority notifies Contractor in writing of its intention to renew at least 12 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 Financial Officer.** Authority hereby appoints Andrew Cantu (“Cantu”) as Chief Financial Officer of Authority. Cantu shall have the authority and responsibility, as specifically set forth in this Agreement, to supervise and manage the day-to-day financial operations 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. Cantu shall keep and maintain or cause to be kept and maintained adequate and correct accounts of the properties and business transactions of Authority, including without limitation, accounts of its assets, liabilities, receipts, disbursements, gains, and losses.

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 financial operations of Authority and 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 may be requested by Authority for the proper and efficient financial management of Authority and KMC, including without limitation, Cantu. 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 Cantu 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 Cantu 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 Additional Staff. Notwithstanding paragraph 4.5, Contractor shall engage or employ such additional qualified personnel as may be requested by Authority for the proper and efficient financial management of Authority and KMC. 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.

4.10 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.

4.11 Devotion to Authority Business. Cantu shall devote productive time, ability and attention to the business of Authority and KMC during the term of this Agreement. Cantu shall not engage in any other business duties or pursuits or render any services of a business, commercial or professional nature for payment without the prior consent of Authority. However, the expenditure of reasonable amounts of time for educational, charitable or professional activities shall not be deemed a breach of this Agreement. This Agreement shall not be interpreted to prohibit Cantu from making personal investments or conducting private business affairs as long as Cantu complies with all conflict of interest laws applicable to public officials.

4.12 Authorized Absences. Notwithstanding any provision in this Agreement to the contrary, Cantu shall be permitted to be absent from Authority during normal business hours for vacation or sick leave, or to attend professional meetings and outside professional duties in the healthcare field. Cantu shall notify the Chief Executive Officer, or designee, in advance of taking any vacation leave or other planned absence.

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 Authority and 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 Authority and 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 in accordance with the fiscal provisions set forth in paragraph 6.1. All services are payable in arrears.

6.1 **Fiscal Provisions.**

6.1.1 **Management Fee.** Authority shall pay Contractor a monthly management fee for staff engaged or employed by Contractor pursuant to paragraph 4.5 (the "Management Fee"). Authority shall have no obligation to pay the Management Fee set forth in this paragraph 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 52%.

6.1.2 **Meet and Confer.** In the 90-day period prior to September 1, 2022, and each subsequent September 1, 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.

6.1.3 **Staffing Fee.** Authority shall pay Contractor a monthly staffing fee for additional staff engaged or employed by Contractor pursuant to paragraph 4.9 (the "Staffing Fee"), based on the hourly rates set forth in Authority's Standardized Salary Schedule plus a percentage of costs (benefits and expenses) not to exceed 35%. Authority shall have no obligation to pay the Staffing Fee set forth in this paragraph until Contractor has incurred such expenses. The Staffing Fee shall be calculated on a prorated basis as positions are filled and/or vacated.

6.1.4 **Fair Market Value.** The parties acknowledge that the compensation set forth herein were 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 “B,” 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 \$7,200,000 for the period September 1, 2019 through August 31, 2021.

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 Chief Executive Officer and/or 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 “C,” 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 "D," 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:

Cantu Management Group, Inc.
11420 Privet Place
Bakersfield, California 93311
Attn: Its President

Notice to Authority:

Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn: Chief Executive Officer

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 12 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 Cantu to perform all, or substantially all, of the duties of Chief Financial Officer, which failure persists for five (5) business days after written notice to Cantu (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 Cantu to properly and timely perform the duties of Chief Financial 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 Cantu or disloyalty by Cantu 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 Chief Executive Officer and/or Board of Governors; (xiii) commission of any unlawful or intentional act by Cantu or Contractor which would be detrimental to the reputation, character or standing of Authority or KMC; (xiv) conviction of Cantu 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 Cantu or 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 Cantu or 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.

CANTU MANAGEMENT GROUP, INC.

By _____
Andrew Cantu
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
KERN COUNTY HOSPITAL AUTHORITY

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT "A"
DESCRIPTION OF SERVICES
Cantu Management Group, Inc.

Contractor shall provide the services of Andrew Cantu ("Cantu") on a full-time basis to act as the Chief Financial Officer of Authority. Cantu shall be accountable to the Board of Governors through the Chief Executive Officer ("CEO"), and cooperate with the CEO while being supportive of Authority and KMC staff. The general duties and expectations of Cantu and the position are as follows:

- Develop and maintain excellent working relationships with the Board, CEO, senior leadership team, and medical staff based on trust, collaboration and mutual respect
- Promote sound financial management through leadership, policy and oversight
- Establish a reputation as a chief financial officer capable of guiding the organization through a variety of complex financial issues
- Collaborate with the senior leadership in the performance of all services
- Partner with the CEO and senior leadership team to enhance efficiencies and productivity through regular monitoring of performance against benchmarks by making adjustments on a regular basis to meet growth and cost control targets
- Develop tools for financial forecasting and modeling of opportunities in the physician alignment strategy that lead to successful integration of additional physician groups into the physician enterprise
- Interface and maintain strong communication with the Board and facilitate coordination and integration of financial reporting to ensure accurate and timely financial information
- Direct the installation of financial systems within the various sections of the hospital; ensure the development and operation of internal data processing programs
- Manage the coordination of centralized data processing systems, as required
- Maintain liaison with various agencies and insurance carriers to ensure that data provided will facilitate payment
- Direct all credit and collection activities within the hospital; maintain responsibility for budget preparation and operating budget controls
- Develop information systems that ensure accountable line managers are aware of budgets and resultant expenditures, and management reports are developed which provide the Board and CEO with timely statements of the Authority's fiscal condition
- Maintain necessary liaisons with the state Medi-Cal program and fiscal intermediaries under the Medicare program
- Direct the patient registration and hospital admission functions; ensure the proper control and record maintenance for all billing, collecting, registration and patient data entry as it applies to the Authority's financial services
- Develop and execute financial control systems within the organization through direct supervision of the financial team
- Establish internal audit controls and promote timely corrections of deficiencies

- Direct the procurement process to ensure controls are in place and in compliance with policies
- Keep abreast of all legislative program changes that affect the Authority's revenue

[Intentionally left blank]

EXHIBIT "B"

IRS FORM W-9

EXHIBIT "C"
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 Cantu Management Group, Inc. ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of September 1, 2019 (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 County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn: Chief Executive Officer

Business Associate's Notice Address:

Cantu Management Group, Inc.
11420 Privet Place
Bakersfield, California 93311
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:

Cantu Management Group, Inc.

Title: Chairman, Board of Governors

Date: _____

Title: Its President

Date: _____

EXHIBIT "D"

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

August 21, 2019

Subject: Request approval to close Kern County Hospital Authority fiduciary fund (Fund 42930) within the Financial Management System of the County of Kern

Recommended Action: Approve; Adopt Resolution; Authorize Chief Financial Officer to direct Kern County Auditor-Controller-County Clerk to close Fund 42930 and transfer any remaining funds to Kern County Hospital Authority

On February 20, 2019, pursuant to the authority granted in Resolution No. 2019-004, your Board approved the establishment of a treasury outside the Kern County Treasury Pool, effective March 1, 2019. Approval of a treasury outside the Kern County Treasury Pool included, among other things, transition of the Authority's treasury function from the County of Kern to PNC Bank, National Association (PNC Bank). The Authority completed transition of the treasury function from the County to PNC Bank on April 1, 2019.

The County maintains a fiduciary fund (Fund 42930) on behalf of the Authority in its financial management system (FMS). The Authority desires to close the fund. The County requires your Board to adopt a resolution approving closure of the fund.

Therefore, it is recommended that your Board approve the closure of Fund 42930, adopt the attached resolution, and authorize the Chief Financial Officer to direct the Kern County Auditor-Controller-County Clerk to close Fund 42930 and transfer any remaining funds to the Authority.

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

In the matter of:

Resolution No. 2019-____

**APPROVING THE CLOSURE OF KERN COUNTY
HOSPITAL AUTHORITY FUND (42930) WITHIN
THE FINANCIAL MANAGEMENT SYSTEM OF
THE COUNTY OF KERN**

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 21st day of August, 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:

ABSTAIN:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) On February 20, 2019, pursuant to the authority granted in Resolution No. 2019-004, the Board of Governors of the Kern County Hospital Authority (“Authority”) approved the establishment of a treasury outside the Kern County Treasury Pool, effective March 1, 2019; and

(b) On February 26, 2019, pursuant to the authority granted in Resolution No. 2019-040, the Kern County Board of Supervisors approved the establishment by the Authority of its own treasury, separate and apart from the Kern County Treasury Pool; and

(c) Approval of a treasury outside the Kern County Treasury Pool included, *inter alia*, transition of the Authority’s treasury function from the County of Kern to PNC Bank, National Association (“PNC Bank”); and

(d) The transition of the Authority’s treasury function from the County of Kern to PNC Bank was completed on April 1, 2019; and

(e) The County of Kern maintains a fiduciary fund (“Fund 42930”) in the name of the Kern County Hospital Authority within its financial management system (“FMS”); and

(f) The Board of Governors desires to close Fund 42930; and

(g) The County of Kern requires the Board of Governors to adopt a resolution prior to closing Fund 42930.

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 closure of Fund 42930 within the FMS maintained by the County of Kern.

3. This Board hereby authorizes the Chief Financial Officer of the Authority to direct the Kern County Auditor-Controller-County Clerk to close Fund 42930 and transfer any remaining funds to the Authority.

4. This Resolution shall take effect from and after its adoption by this Board.

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

Kern Medical Center
Chief Financial Officer
Director of Finance
Legal Services Department
Kern County Administrative Office
Kern County Auditor-Controller-County Clerk
Clerk of the Kern County Board of Supervisors



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

August 21, 2019

Subject: Proposed retroactive First Amendment to Agreement 011-2019 with PNC Bank, National Association (PNC Bank) for a revolving line of credit, effective July 1, 2019, 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 First Amendment Credit Agreement and Promissory Note, 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

Summary:

Pursuant to the authority granted in Resolution No. 2019-004 adopted by your Board on February 20, 2019, and Resolution No. 2019-040, adopted by the Kern County Board of Supervisors on February 26, 2019, the Authority entered into a Credit Agreement with PNC Bank, effective March 1, 2019, to establish a revolving line of credit for the purpose of obtaining funding from time to time for the Authority's working capital and other financial needs. The Credit Agreement provides for loans in a principal amount not to exceed \$20,000,000, providing for increases in the principal amount to \$50,000,000 for the period July 1, 2019 through October 31, 2019, to coincide with the Authority's implementation of Cerner, which implementation has been delayed to November 1, 2019.

Given the delay in implementing Cerner, PNC Bank has agreed to amend the Credit Agreement to permit the Authority to increase the principal amount to \$50,000,000 at any time within the two-year term of the Agreement, provided that the increase period does not exceed 120 days.

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

FIRST AMENDMENT TO CREDIT AGREEMENT AND PROMISSORY NOTE

This First Amendment to Credit Agreement (this “*Amendment*”) executed on _____, 2019, and effective retroactively on July 1, 2019 (the “*Amendment Date*”), is between Kern County Hospital Authority (the “*Authority*”) and PNC Bank, National Association, as the issuer of the Letter of Credit (in such capacity, together with its successors and assigns, the “*Bank*”). All terms used herein and not defined herein shall have the meanings assigned to such terms in the hereinafter defined Agreement.

WITNESSETH

WHEREAS, the Authority and the Bank have previously entered into the Credit Agreement dated as of March 1, 2019 (the “*Agreement*”), pursuant to which the Bank agreed to make one or more Loans to the Authority subject to the terms and conditions set forth in the Agreement;

WHEREAS, pursuant to Section 9.3 of the Agreement, the Agreement may be amended by a written amendment thereto, signed by the Authority and the Bank;

WHEREAS, the parties hereto wish to amend the Agreement as set forth herein;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. AMENDMENTS TO CREDIT AGREEMENT AND PROMISSORY NOTE.

Upon satisfaction of the conditions precedent set forth in Section 2 hereof, the Agreement shall be amended as follows:

1.01. The definitions of the terms “*Commitment*”, “*Debt*”, “*Deposit Account Transfer Date*” and “*Supplemental Fee Event*” set forth in Section 1.1 of the Agreement are hereby amended and restated in their entireties as follows:

“*Commitment*” means \$20,000,000; *provided, however*, that if an Authorized Representative provides written notice to the Bank (the “*Increase Notice*”) requesting an increase to the Commitment to \$50,000,000 and within such written notice provides the date on which the increase in Commitment shall commence (the “*Commitment Increase Date*”) to and including the date specified in such written notice (provided that such date shall not be more than 120 days from the Commitment Increase Date) (the period from and including the Commitment Increase Date specified in such Increase Notice to and including the end date specified in the Increase Notice is referred to herein as the “*Commitment Increase Period*”), the Commitment shall be \$50,000,000; *provided, further, however*, that from and after the day immediate succeeding the Commitment

Increase Period, the Commitment shall immediately and automatically be \$20,000,000, and in all cases set forth in this definition, as such amount may be reduced pursuant to the terms hereof.

“*Debt*” means, at any date, without duplication, (a) all obligations of the Authority for borrowed money, (b) all obligations of the Authority evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of the Authority to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of the Authority as lessee under capital leases, (e) all Debt of others secured by a lien on any asset of the Authority, whether or not such Debt is assumed by the Authority, (f) all guarantees by the Authority of Debt of other Persons and (g) all obligations of the Authority under any Swap Agreement; *provided, however,* that Debt shall not mean any obligation of the Authority or Kern Medical Center with respect to any advance provided to the Authority or Kern Medical Center by a Governmental Authority in connection with an intergovernmental transfer arrangement between the Authority, on behalf of itself and/or Kern Medical Center, and a Governmental Authority.

“*Deposit Account Transfer Date*” means May 1, 2020, which is the date on which all deposit accounts of the Authority maintained at the Depository Bank have been closed and all of the Authority’s deposit accounts have been opened at the Bank.

“*Supplemental Fee Event*” means not later than May 1, 2020, the Authority shall have failed to establish all of its treasury management business (including, without limitation, its Automated Clearinghouse House operations, its Electronic Data Interchange operations, its Account Reconciliation operations, its Controlled Disbursement Account, its lockboxes and its wiring operations) with the Bank.

1.02. Section 1.1 of the Agreement is hereby amended by incorporating the following defined terms in their appropriate alphabetical order:

“*Commitment Increase Date*” has the meaning set forth in the definition of “Commitment.”

“*Commitment Increase Period*” has the meaning set forth in the definition of “Commitment.”

“*Increase Notice*” has the meaning set forth in the definition of “Commitment.”

1.03. The first paragraph of the Bank Note is amended and restated in its entirety as follows:

FOR VALUE RECEIVED, the undersigned, KERN COUNTY HOSPITAL AUTHORITY (the “*Authority*”), HEREBY PROMISES TO PAY to the order of PNC BANK, NATIONAL ASSOCIATION (the “*Bank*”), (i) \$20,000,000; or, during the Commitment Increase Period in accordance with the terms of the Agreement, \$50,000,000, or, in any case, if less, the aggregate unpaid principal amount of all Loans (as such term is defined in the Agreement hereinafter defined) made by the Bank to the Authority, payable at such times as are specified in the Agreement (as defined below), and (ii) interest on the unpaid principal amount of each Loan made by the Bank, from the date of each such Loan until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Agreement; *provided, however*, all principal of, and all earned interest then accrued on, this Bank Note shall be fully and finally due and payable on the dates set forth in the Agreement.

2. CONDITIONS PRECEDENT.

This Amendment shall be deemed effective on the Amendment Date subject to the satisfaction of or waiver by the Bank of all of the following conditions precedent (such satisfaction to be evidenced by the Bank’s execution and delivery of this Amendment):

2.01. Delivery by the Authority of an executed counterpart of this Amendment.

2.02. Delivery to the Bank of an opinion of counsel to the Authority, addressed to the Bank and in form and substance satisfactory to the Bank and its counsel.

2.03. Receipt by the Bank of (i) a certified copy of the authorizing resolution of the Authority (which may be an existing authorizing resolution) approving the execution and delivery and performance of its obligations under the Agreement and the Bank Note, as amended hereby and (ii) a customary certificate executed by appropriate officers of the Authority including the incumbency and signature of the officer of the Authority executing this Amendment.

2.04. Payment to the Bank on the Amendment Date of the reasonable legal fees and expenses of counsel to the Bank.

2.05. All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Bank and its counsel.

3. REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY.

3.01. The Authority hereby represents and warrants that the following statements shall be true and correct as of the date hereof:

(a) the representations and warranties of the Authority contained in Section 5 of the Agreement and in each of the Loan Documents are true and correct on and as of the date hereof as though made on and as of such date (except to the extent the same expressly relate to an earlier date and except that the representations contained in Section 5.7 of the Agreement shall be deemed to refer to the most recent financial statements of the Authority delivered to the Bank pursuant to Section 7.5(a) of the Agreement); and

(b) no Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment.

3.02. In addition to the representations given in Section 5 of the Agreement, the Authority hereby represents and warrants as follows:

(a) The execution, delivery and performance by the Authority of this Amendment and the Agreement and the Bank Note, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the Authority.

(b) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Authority of this Amendment or the Agreement or the Bank Note, as amended hereby.

(c) This Amendment and the Agreement and the Bank Note, as amended hereby, constitute valid and binding obligations of the Authority enforceable against the Authority in accordance with their respective terms, except that (i) the enforcement thereof may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, the exercise of judicial discretion in appropriate cases and by the limitations on legal remedies against the Authority, and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

4. MISCELLANEOUS.

Except as specifically amended herein, the Agreement and the Bank Note shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement or the Bank Note, it being hereby agreed that any reference to the Agreement or the Bank shall be sufficient to refer to the Agreement and the Bank Note, as hereby amended. In case any one or more of the provisions contained herein

should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Agreement. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Amendment may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers hereunto duly authorized as of the Amendment Date.

“AUTHORITY”

KERN COUNTY HOSPITAL AUTHORITY

By: _____

Name: Russell V. Judd
Title: Chief Executive Officer

By: _____

Name: Andrew J. Cantu
Title: Chief Financial Officer

APPROVED AS TO FORM:

By: _____

Name: Karen S. Barnes
Title: Vice President & General Counsel,
Kern County Hospital Authority

“BANK”

PNC BANK, NATIONAL ASSOCIATION

By: _____

Name: Kimberly Ray
Title: Vice President

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

In the matter of:

Resolution No. 2019-____

**APPROVING CERTAIN AMENDMENTS TO THE
CREDIT AGREEMENT AND PROMISSORY NOTE
WITH PNC BANK, NA, AND CERTAIN OTHER
ACTIONS IN CONNECTION THEREWITH, 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 21st day of August, 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:

ABSTAIN:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The Kern County Hospital Authority (the "Authority") is a local unit of government separate and apart from the County of Kern (the "County") and any other public entity, and was established by the County under Ordinance A-356, enacted on October 6, 2015 and effective November 6, 2015 (the "Ordinance"), which Ordinance is codified as Chapter 2.170 of the County Code of Ordinances;

(b) Pursuant to the authority granted in Resolution No. 2019-004 adopted by the Board of Governors of the Authority on February 20, 2019, and Resolution No. 2019-040, adopted by the Board of Supervisors of the County on February 26, 2019, the Authority entered into a Credit Agreement with PNC Bank, National Association (the “Bank”), dated as of March 1, 2019 (the “Credit Agreement”) to establish a revolving line of credit, which the Authority may utilize in the form of loans (the “Loans”), for the purpose of obtaining funding from time to time for the Authority’s working capital and other financial needs;

(c) The Credit Agreement provides for Loans in a principal amount not to exceed \$20,000,000, provided that such maximum principal amount increases 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 (the “Commitment Increase Period”);

(d) In connection with the execution and delivery of the Credit Agreement, the Authority issued its promissory note to the order of the Bank, dated March 1, 2019 (the “Bank Note”) to evidence the Loans and the Authority’s obligations under the Credit Agreement;

(e) Management of the Authority has advised the Board that the Authority’s implementation of new information technology software relating to the Authority’s revenue cycle is delayed;

(f) Management of the Authority has advised the Board that it is advisable and in the best interest of the Authority to amend the Credit Agreement and, in connection therewith, the Bank Note, to permit the Authority to cause the Commitment Increase Period to commence at any time an Authorized Representative (defined below) of the Authority shall determine and so notify the Bank, provided that the Commitment Increase Period shall be not more than 120 days, and to make other related amendments for the benefit of the Authority;

(g) The Bank has agreed to such amendments; and

(h) Such amendments are memorialized in the First Amendment to Credit Agreement and Promissory Note (the “First Amendment”) and upon execution and delivery of the First Amendment will be effective retroactively on July 1, 2019.

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 authorizes and directs any two of the following officers (each, an “Authorized Officer”) of the Authority, for and in the name of and on behalf of the Authority, to execute the First Amendment, 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 First Amendment shall evidence the approval hereby required.

3. 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.

4. 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.

5. 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.

6. 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.

7. This Resolution shall take effect from and after its adoption by this Board.

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

Kern Medical Center
Legal Services Department
PNC Bank, National Association



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

August 21, 2019

Subject: Proposed retroactive Amendment No. 1 to Agreement 01419 with Kaufman, Hall & Associates, LLC

Recommended Action: Approve; Authorize Chairman to sign

Kern Medical requests your Board retroactively approve Amendment No. 1 to Agreement 01419 with Kaufman, Hall & Associates, LLC, for treasury services implementation support. The underlying Agreement was for a term of six-months from February 1, 2019 through July 31, 2019. The proposed Amendment will extend the term through November 30, 2019, during which time Kaufman Hall will continue to serve as project manager to assist Kern Medical with the transition of its remaining banking services to PNV Bank, N.A. and evaluation and implementation of scannable lockbox and manufactured 835 services with PNC. Kaufman Hall will invoice Kern Medical at the rate of \$30,000 per month for August and September and \$25,000 per month for October and November, subject to proration for partial months. The maximum payable under the Amendment will increase by \$120,600, from \$193,500 to \$314,100, to cover the extend term.

Therefore, it is recommended that your Board retroactively approve Amendment No. 1 to Agreement 01419 with Kaufman, Hall & Associates, LLC, for treasury services implementation support, extending the term for a period of four months from August 1, 2019 through November 30, 2019, increase the maximum payable by \$120,600, from \$193,500 to \$314,100, and authorize the Chairman to sign.



Exceptional Partners. Exceptional Performance.

August 14, 2019

Mr. Andrew Cantu
Chief Financial Officer
Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306

Dear Andy:

Kaufman, Hall & Associates, LLC (“Kaufman Hall”) is pleased to submit to Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (or the “Authority”) this addendum (the “Addendum 1”) to the engagement letter dated January 14, 2019 (the “Engagement Letter”). This Addendum 1 will extend our existing relationship to provide treasury services implementation support (the “Client Project”) to the Authority. This Addendum 1 shall be governed by the terms and conditions set forth and agreed upon in the Engagement Letter. To the extent that the terms of this Addendum 1 conflict with the terms of the Engagement Letter, the terms of Addendum 1 shall control. All other terms and conditions of the Engagement Letter remain in full force and effect.

IMPLEMENTATION PROJECT MANAGEMENT

Kaufman Hall will serve as a project manager to the Authority throughout all stages of transitioning its remaining banking services at Wells Fargo Bank, N.A. (“Wells Fargo”) to PNC Bank, N.A. (“PNC”) (“Phase I”) and will assist the Authority with evaluation and implementation of scannable lockbox and manufactured 835 services with PNC (Phase II).

In our role as project manager, we will retain absolute independence in all aspects of planning and implementation. Kaufman Hall’s only responsibility is to identify, support, and represent the best financial and business interests of the Authority and for any new or additional services, Kaufman Hall will provide objective decision making criteria to the Authority.

Phase I: Complete Implementation of Existing Authority Treasury Services

Based on the Cerner go-live date change from July 1 to November 1; Kaufman Hall is prepared to support the transition of the remaining receivables services from Wells Fargo to PNC.

- A. ***Additional Product Assessment.*** Kaufman Hall will continue to work with the Authority to identify additional products and services that would provide additional automation or efficiencies for its Treasury department. This work effort will focus on PNC’s ability to address operational requirements for payments, data and related information as well as options to improve the automation of payment posting in combination with the Authority’s implementation of Cerner.

Mr. Andrew Cantu
Kern Medical Center
August 14, 2019
Page 2

- B. **Implementation Project Management**. Kaufman Hall is prepared to continue to serve as the lead project manager or co-manager to implement treasury services as assigned by the Authority. This role includes maintaining the project team roster, scheduling and leading periodic progress meetings, and communicating among the participants to ensure that the project plan is followed and that any discrepancies are resolved quickly. Kaufman Hall will be prepared to offer best practices from other client engagements to support the Authority's efforts to build a robust treasury platform with PNC. Receivables products will be the focus of the First Amendment, including the following key steps:
1. Recredential insurance payers using new PNC banking information and ensure infrastructure is in place to post the payments and associated data;
 2. Confirm timing of payment migration from Wells Fargo to PNC;
 3. Ensure over-the-counter cash and check deposits are transitioned to PNC;
 4. Build image transmission to leverage Cerner image repository;
 5. Define required batch creation to promote efficient posting in dual-billing environment and split batches for delivery to Cerner;
 6. Integrate data with what is already being passed to and from GHX; and
 7. Test all files and acknowledgement requirements.
- C. **Post-Implementation Review and Pricing Verification**. After the treasury services have been fully implemented with PNC, Kaufman Hall will provide a post-implementation review to compare the services with the initial implementation project plan to ensure that services have been delivered as described. Kaufman Hall will also review the first three months of the Authority's account analysis statements with PNC to ensure that proposed pricing has been implemented accurately and will communicate with PNC to resolve any discrepancies.

Phase II: Additional Non-Credit Services Implementation

- A. **Treasury Services**. As noted in the Engagement Letter, Kaufman Hall will assist the Authority with implementation of any services identified based on mutual agreement of Kaufman Hall and the Authority. The process for this work effort will be done concurrently with the services implemented in Phase I of this Amendment 1 with the goal of completion on or before the Cerner go-live date.
1. **Scannable Lockbox**. Implementing a scannable lockbox provides the Authority with a more efficient method to handle patient payments delivered to its lockbox through an automated posting file as well as workflow management to support the handling of payments classified as exceptions. The implementation effort for this service takes between three and four months, mostly dependent on developing an approved patient statement coupon and posting an approved test file into Cerner. Key steps to complete the implementation include:
 - a. Create the Statement of Work for creating and programming a scannable lockbox;
 - b. Determine the go-live date for new patient statements and plan to support legacy patient billing;

Mr. Andrew Cantu
Kern Medical Center
August 14, 2019
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- c. Develop scannable coupons, deliver samples and receive approval from PNC; and
 - d. Receive test files created by PNC and confirm automated posting in Cerner test environment.
2. Manufactured 835/Electronic Remittance Advices (“ERA”). The Authority has determined that converting paper Explanation of Benefits (“EOB”) to an ERA in an EDI 835 file format will best support its goals of obtaining additional efficiency in posting commercial payments. This process is an extension of PNC’s lockbox solutions and seeks to connect paper payments and data received in the Authority lockbox with electronic payments and data received. Key steps to complete this implementation include:
- a. Create the Statement of Work for setup of manufactured 835/ERA services;
 - b. Determine plan to support legacy insurance billing through split 835 delivery;
 - c. Communicate with payers and review against PNC payer network to identify candidates for conversion to a direct 835 enrollment;
 - d. Establish framework for efficiently converting paper received in PNC lockbox(es) and support for posting into Cerner; and
 - e. Receive test files created by PNC and confirm automated posting in Cerner test environment.

Services Not Included

This proposal focuses on banking related services and does not include revenue cycle consulting services or contemplate assistance with systems utilized by the Authority, including Cerner and other financial software systems. Should unrelated issues arise that are a result of the Cerner implementation (filing of claims as an example), Kaufman Hall expects that to be handled with other parties outside of this engagement.

For the avoidance of doubt, the Authority understands that in rendering services hereunder Kaufman Hall will not provide accounting, legal, compliance, tax, audit, or regulatory advice and will rely upon the advice of counsel to the Authority and other advisors to the Authority for such matters.

ENGAGEMENT TEAM

Your primary contacts for this engagement will be Ellen Riley, Marek Kowalewski, Geoff Stenger, and Zech Decker. Ellen will serve as the Client Service Executive with overall responsibility for the engagement with support from Marek. Geoff and Zech will have day-to-day treasury services project management responsibilities with primary focus on all elements of this proposal. Additional Kaufman Hall executives will provide assistance as appropriate throughout the engagement.

Mr. Andrew Cantu
Kern Medical Center
August 14, 2019
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TIMING AND PROFESSIONAL FEES

Professional fees for this Amendment 1 will be invoiced monthly at a rate of \$30,000 per month for August and September, and \$25,000 per month for October and November, subject to proration for partial months as a result of termination.

In addition to professional fees, the Authority is responsible for reimbursable travel, office, and any third-party data/analytics expenses in accordance with the Authority's expense reimbursement policy. Travel and third-party data/analytics expenses are billed as incurred and are not subject to markup. The Authority agrees that Kaufman Hall may be reimbursed for amounts exceeding limits outlined in the expense reimbursement policy, or expenses not contemplated therein, upon the Authority's prior written approval. Office expenses of \$2,650 per month include report preparation, communication expenses, and express shipments, among other overhead costs. Invoices are sent at the end of each month and are due upon receipt.

The proposed professional fees will remain fixed unless the scope of services or schedule change materially or at the request of the Authority. In the event this were to occur, Kaufman Hall may be entitled to additional fees, but subject to the mutual agreement of the parties.

RIGHT TO TERMINATE

Either party may terminate this agreement at any time by providing the other party thirty (30) days' prior written notice, including email, of its desire to terminate ("Notification Date"). Kaufman Hall would be entitled to payment of a pro-rated portion of its professional fees, as well as reimbursement of expenses incurred through the Notification Date.

AUTHORIZATION

Thank you for the opportunity to support Kern Medical Center. Your signature below indicates your agreement with Amendment. Please sign and return to us via email or by fax to (847) 965-3511.

If you have any questions, please do not hesitate to contact Ellen Riley at (818) 231-1053 or Geoff Stenger, at (312) 259-8223.

Sincerely,
KAUFMAN, HALL & ASSOCIATES, LLC

Kaufman, Hall & Associates, LLC

/sd

cc: Ellen Riley
Geoff Stenger
Eric Jordahl

This Amendment 1 is accepted.
KERN COUNTY HOSPITAL AUTHORITY

Authorizing Signature / Date

Printed Name / Title

APPROVED AS TO FORM
Legal Services Department

By *Andrew D. James*
Kern County Hospital Authority



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

August 21, 2019

Subject: Proposed Resolution Revising the Extension of Excess Medical Professional Liability Coverage to Kern Medical Employed and Independent Contractor Physicians

Recommended Action: Approve; Adopt Resolution

Summary:

The Kern County Hospital Authority provides professional liability coverage in the form of indemnification for all claims relating to the professional medical services rendered on behalf of the Authority; provided, however, that the indemnification does not extend to any services rendered at any location other than Kern Medical and its affiliated clinics without approval of your Board. Effective July 1, 2019, the Authority has self-insured the first \$2,000,000 per medical incident or occurrence and has purchased umbrella coverage of \$25,000,000 in excess of the self-insured retention.

On March 21, 2018, your Board adopted Resolution No. 2018-004, which revised the extension of excess professional liability coverage to Kern Medical employed and independent contractor physicians at specific authorized off-site locations. Kern Medical is recommending the following to be added to the list of authorized off-site locations:

- DaVita Casa Del Rio Ht at Home
- DaVita Bakersfield Dialysis Center
- DaVita Northeast Dialysis

Extending excess medical professional liability coverage to employed and independent contractor physicians at the additional off-site locations will enable the physicians to generate additional revenue for Kern Medical and will provide Kern Medical the opportunity to care for patients and continue to build its reputation as a hospital of excellence. There is no added cost to the Authority's medical professional liability program to extend the requested coverage.

The Authority will administer/submit claims, if any, in excess of the \$2,000,000 self-insured retention to CNA, the Authority's excess medical professional liability carrier.

Therefore, it is recommended that your Board approve and adopt the attached resolution revising the extension of excess medical professional liability coverage for employed and independent contractor physicians, when providing professional medical services on behalf of Kern Medical at the facilities listed in the resolution, effective August 21, 2019.

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

In the matter of:

Resolution No. 2019-____

**REVISED EXTENSION OF EXCESS MEDICAL
PROFESSIONAL LIABILITY COVERAGE
FOR KERN COUNTY HOSPITAL AUTHORITY
EMPLOYED AND INDEPENDENT
CONTRACTOR PHYSICIANS**

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 21st day of August, 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 Kern County Hospital Authority (“Authority”) provides professional liability coverage in the form of indemnification for all claims relating to the services rendered on behalf of the Authority; provided, however, that the indemnification does not extend to any services rendered at any location other than Kern Medical Center and its affiliated clinics without approval of the Board of Governors; and

(b) On June 22, 2016, the Board of Governors adopted Resolution No. 2016-012, which extended excess professional liability coverage to Kern Medical Center employed and independent contractor physicians at specific authorized off-site locations; and

(c) On September 21, 2016, the Board of Governors adopted Resolution No. 2016-018, which revised the extension of excess professional liability coverage to include Millennium Surgery Center, Physicians Plaza Surgical Center, Northwest Surgery Center, and Southwest Surgical Center to the list of authorized off-site locations; and

(d) On March 21, 2018, the Board of Governors adopted Resolution No. 2018-004, which revised the extension of excess professional liability coverage to include Southern California Orthopedic Institute, Bakersfield Specialists Surgical Center, LLC, and Kern Medical Surgery Center, LLC to the list of authorized off-site locations; and

(e) Kern Medical Center is recommending DaVita Casa Del Rio Ht at Home, DaVita Bakersfield Dialysis Center, and DaVita Northeast Dialysis to be added to the list of authorized off-site locations; and

(f) Extending excess medical professional liability coverage to employed and independent contractor physicians at these additional off-site locations will enable the physicians to generate additional revenue for Kern Medical Center and will provide Kern Medical Center the opportunity to care for patients and continue to build its reputation as a hospital of excellence; and

(g) The Authority has self-insured the first \$2,000,000 per medical incident or occurrence and has purchased umbrella coverage of \$25,000,000 in excess of the self-insured retention, effective July 1, 2019; and

(h) There is no added cost to the Authority's medical professional liability program to extend the requested coverage to these off-site locations; and

(i) The Authority will administer/submit claims, if any, in excess of the self-insured retention to CNA, the Authority's excess medical professional liability carrier.

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 finds the best interests of the Authority shall be served by extending excess medical professional liability coverage to Kern Medical Center employed and independent contractor physicians at the following authorized off-site locations:

- (a) Comprehensive Blood and Cancer Center;
- (b) Mercy Hospital;
- (c) Bakersfield Memorial Hospital;
- (d) San Joaquin Community Hospital;
- (e) Bakersfield Heart Hospital;
- (f) Millennium Surgery Center;
- (g) Physicians Plaza Surgical Center;
- (h) Northwest Surgery Center;
- (i) Southwest Surgery Center;
- (j) Bahamas Surgery Center;
- (k) Clinica Sierra Vista;
- (l) Southern California Orthopedic Institute;
- (m) Bakersfield Specialists Surgical Center, LLC;
- (n) Kern Medical Surgery Center, LLC;
- (o) Kern County owned and operated correctional facilities;
- (p) Kern County Behavioral Health and Recovery Services;
- (q) DaVita Casa Del Rio Ht at Home;
- (r) DaVita Bakersfield Dialysis Center;
- (s) DaVita Northeast Dialysis; and
- (t) Facilities owned or leased and operated by the Authority.

3. The provisions of this Resolution shall be effective, in force, and operative as of the 21st day of August, 2019.

4. Resolution No. 2018-004, adopted by the Board of Governors on March 21, 2018, is hereby repealed and superseded by this Resolution.

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

Kern Medical Center
Chief Executive Officer
Chief Financial Officer
Chief Strategy Officer
Legal Services Department
Workers' Compensation & Liability Manager
Columbia Casualty Company (CNA)
Alliant Insurance Services, Inc.



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

Subject: Proposed Agreement with Pacific Gynecologic Specialists, a California General Partnership, for Professional Physician Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an agreement with Pacific Gynecologic Specialists, a California general partnership, for professional gynecologic oncology services in the Department of Obstetrics and Gynecology. Pacific Gynecologic Specialists has contracted with Kern Medical since 2007 when it was owned and operated by the County of Kern. The Contractor provides professional physician services at the hospital and clinics, has academic responsibilities in the OB/GYN residency, and supports Kern Medical's cancer programs.

Therefore, it is recommended that your Board approve the agreement with Pacific Gynecologic Specialists, from September 1, 2019 through August 31, 2021 in an amount not exceed \$800,000 over the two-year term and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Pacific Gynecologic Specialists)**

This Agreement is made and entered into this ____ day of _____, 2019, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Pacific Gynecologic Specialists, a California general partnership (“Contractor”), and the individual partners of Contractor, with its principal place of business located at 300 West Huntington Drive, Arcadia, California 91007.

**I.
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 KMC, a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California, and affiliated clinics (collectively, the “Premises”), in which is located the Department of Obstetrics and Gynecology (the “Department”); and

(c) Contractor is a California general partnership engaged in the practice of providing professional medical services, and includes individual partners who are professional medical corporations organized under the laws of the state of California (“Group Physician”). Group Physicians include John B. Schlaerth, M.D., A Medical Corporation, and Alan C. Schlaerth, M.D., A Medical Corporation; and

(d) Authority requires the assistance of Contractor to provide professional medical services to patients of KMC and teaching services to resident physicians employed by Authority, as such services are unavailable from Authority resources, and Contractor desires to provide such services on the terms and conditions set forth in this Agreement; and

(e) Contractor has special knowledge, training and experience, and is qualified to render such services;

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:

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall commence September 1, 2019 (the “Effective Date”), and shall end August 31, 2021, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor agrees to provide professional medical services through Group Physicians at KMC, including but not limited to the services set forth below. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

2.1.1 **Division Chief.** Contractor shall appoint one or more Group Physicians to serve as Chief, Division of Gynecologic Oncology at KMC. The Division Chief shall report to the Chair, Department of Obstetrics and Gynecology.

2.1.2 **Clinical Responsibilities:** Contractor through Group Physicians shall provide mutually agreed upon gynecologic oncology and gynecologic services to patients of KMC.

2.1.3 **Teaching.** Contractor through Group Physicians shall provide mutually agreed upon gynecologic oncology and gynecologic teaching to resident physicians and medical students.

2.1.4 **On-site Consultations.** Contractor through Group Physicians shall provide on-site consultations, as requested, weekdays, Monday through Friday, and on-site emergency consultations, as requested, weekends, Saturday and Sunday.

2.1.5 **Medical Education; Academic Responsibilities.** Contractor shall ensure assigned Group Physicians (i) provide clinical mentoring to and evaluation of resident physicians and medical students, (ii) maintain board certification.

2.1.6 **Committee Assignments.** Contractor acknowledges the obligation of Group Physicians to (i) attend Department staff meetings and the annual medical staff meeting, (ii) participate in medical staff committees as assigned by the president of the medical staff, and (iii) attend and participate in the Cancer Committee.

2.2 **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.

2.3 **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.

2.4 Performance Standard. Contractor shall perform all services 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) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of section 36; or (d) pursue any and all other remedies at law or in equity.

2.5 Assigned Personnel. Contractor shall assign only competent personnel to perform the Services 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 the services hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Authority. Group Physicians providing services under this Agreement include, without limitation, John B. Schlaerth, M.D.

2.6 Qualifications of Group Physicians.

2.6.1 Licensure/Board Certification. Group Physicians shall at all times during the term of this Agreement be duly licensed physicians and surgeons in the state of California, practicing in the medical specialty of gynecologic oncology and gynecology, and certified by the American Board of Obstetrics and Gynecology in obstetrics and gynecology-general and gynecologic oncology-subspecialty, and maintain such certifications at all times during the term of this Agreement.

2.6.2 Medical Staff Status. Each Group Physician shall at all times during the term of this Agreement be a member in good standing of the KMC medical staff with "active" or "courtesy" staff status and hold all clinical privileges on the active or courtesy medical staff appropriate to the discharge of his or her obligations under this Agreement.

2.6.3 TJC and ACGME Compliance. Each Group Physician shall observe and comply with all applicable standards and recommendations of The Joint Commission and Accreditation Council for Graduate Medical Education.

2.6.4 Training/Experience. Each Group Physician shall have (i) recent gynecologic oncology and gynecology experience in the operating room, labor and delivery, and intensive care unit, (ii) an academic background to include teaching and working in an academic medical center, experience working with other clinical departments, teaching residents and medical students, participating in hospital committees, and working on pathways and evidence-based guidelines, and (iii) ongoing acute care hospital experience.

2.7 Rights and Duties. The Division chief shall act as the authorized agent for Contractor in all matters relating to the performance of Group Physicians under this Agreement. Contractor shall require Group Physicians to participate in the educational and committee

activities of the KMC medical staff. Contractor shall, by contract, obligate Group Physicians to comply fully with all duties, obligations and restrictions imposed upon Contractor under this Agreement.

2.8 Loss or Limitation. Contractor shall notify KMC promptly of any loss, sanction, suspension or material limitations of any Group Physician's license to practice in the state of California, Controlled Substance Registration Certificate issued by the Drug Enforcement Administration, right to participate in the Medicare or Medicaid programs, or specialty qualifications for medical staff membership or clinical privileges.

2.9 Standards of Medical Practice. The standards of medical practice and professional duties of all Group Physicians providing services under this Agreement shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for practice established by the state Department of Public Health and all other state and federal laws and regulations relating to the licensure and practice of physicians, and The Joint Commission.

2.10 Medical Record Documentation. Contractor shall cause a complete medical record to be timely prepared and maintained for each patient seen by a Group Physician providing services under this Agreement. This record shall be prepared in compliance with all state and federal regulations, standards of The Joint Commission, and the KMC medical staff bylaws, rules, regulations, and policies. Documentation by Group Physicians will conform to the requirements for evaluation and management (E/M) services billed by teaching physicians set forth in the Medicare Carriers Manual, Part 3, sections 15016–15018, inclusive.

2.11 Quality Improvement and Risk Management. Contractor agrees that all Group Physicians shall participate in (i) the quality improvement and risk management programs of KMC and serve on such committees as may be required; (ii) ongoing quality improvement activities, such as audits, which will be conducted annually in the Department in order to evaluate and enhance the quality of patient care; and (iii) risk management activities designed to identify, evaluate and reduce the risk of patient injury associated with care. At a minimum, Contractor shall ensure that the quality improvement program consists of the following integrated components: (i) professional development that provides continuous performance feedback that is benchmarked, evaluated, and rated individually and collectively; (ii) clinical standards that are evidence-based and grounded in industry best practices; (iii) performance improvement that is outcomes-focused and based on quality indicators/metrics with quarterly reporting of same; and (iv) customer satisfaction that is feedback/survey-driven and objectively and comparatively measured, tracked/trended, and analyzed. The appropriate review mechanism will be applied in accordance with the provisions of the KMC medical staff bylaws, The Joint Commission, and applicable law.

2.12 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.

2.13 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. **Obligations of Authority.**

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

3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, 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. Neither Contractor nor Group Physicians shall use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor or any Group Physician of any portion of the Premises, and insofar as Contractor or Group Physicians may use a portion of said Premises, Contractor and Group Physicians do so as licensees only, and Authority and KMC shall, at all times, have full and free access to the same.

3.4 Equipment. KMC shall furnish for the use of the Department such equipment as is deemed necessary by KMC for the proper operation and conduct of the Department consistent with community standards. KMC 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.

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

3.6 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 KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority shall pay Contractor according to the fee schedule set forth in this paragraph 4.1. All services are payable in arrears.

4.1.1 Annual Fee. Authority shall pay Contractor a fixed fee in the amount of \$400,000 per year at the rate of \$33,334 per month.

4.1.2 Compensation All-inclusive. The compensation paid to Contractor is inclusive of all expenses, including without limitation, lodging, mileage reimbursement, car rental, meals, and incidental expenses.

4.1.3 Limitations on Compensation. Except as expressly stated herein, neither Contractor nor Group Physicians shall receive any benefits from Authority, including without limitation, health benefits, sick leave, vacation, holidays, deferred compensation or retirement.

4.1.4 Fair Market Value Compensation. The compensation provided under section 4.1 represents the parties' good faith determination of the reasonable fair market value compensation for the services to be provided by Contractor under this Agreement.

4.2 Maximum Payable. The maximum payable under this Agreement will not exceed \$800,000 over the two-year term of this Agreement.

4.3 Invoices. Invoices for payment shall be submitted in a form approved by KMC and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made to Contractor within 30 days of receipt and approval of each invoice by KMC.

4.4 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "A," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.5 Professional Fee Billing. KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor and Group Physicians to KMC patients at KMC or a KMC location during the term of this Agreement. All professional fees generated by Contractor or Group Physicians for services rendered to KMC patients at KMC or a KMC location during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of KMC, whether received by KMC or by Contractor or a Group Physician and whether received during the term of this Agreement or anytime thereafter. Contractor and Group Physicians hereby assign all rights to said fees and accounts to KMC and shall execute all documents required from time to time by KMC and otherwise fully cooperate with KMC to enable KMC to collect fees and accounts from patients and third-party payers. Notwithstanding the foregoing, all professional fees generated by Contractor or Group Physicians for services rendered to patients at non-KMC designated locations, including services rendered by Contractor or Group

Physicians to KMC patients at such locations during the term of this Agreement shall be the sole and exclusive property of Contractor.

4.6 **Managed Care Contracting.** Contractor shall cooperate, and shall ensure that Group Physicians cooperate, in all reasonable respects necessary to facilitate KMC's entry into or maintenance of any third-party payer arrangements for the provision of services under any other public or private health and/or hospital care programs, including but not limited to insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations. To enable Authority or KMC to participate in any third-party payer arrangements, Contractor and/or Group Physicians shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from Authority and KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a "Managed Care Organization") designated by Authority or KMC for the provision of professional services to patients covered by such Managed Care Organization; (ii) enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization; and/or (iii) enter into a written agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

5. **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.

6. **Anti-referral Laws.** Contractor acknowledges that it is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall 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).

7. **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.

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all its activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Authority herein.

9. **Authority to Incur Financial Obligation.** It is understood that neither Contractor nor Group Physicians, in the performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.

10. **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.

11. **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 amendment(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 at the end of such 30-day period.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

13. **Compliance with Law.** Contractor shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.

14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of its duties described herein that it shall act, and cause its employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and its employees shall participate in compliance training and education as reasonably requested by KMC.

15. **Confidentiality.**

15.1 **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.

15.2 **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 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.

15.3 **Medical Records.** The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

15.4 **Medical Staff and Committee Records.** All records, files, proceedings and related information of Group Physicians, 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 and Group Physicians. Neither Contractor nor Group Physicians shall voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC.

15.5 **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 or Group Physicians 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.

15.6 **Non-disparagement.** Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, 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. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

16. **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.

17. **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.

18. **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.

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. **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.

21. **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.

22. **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 required in 8 USCA section 1324a. Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section 22.

23. **Indemnification and Hold Harmless.** Authority shall assume liability for and indemnify and hold Contractor and Group Physicians harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Contractor or Group Physicians or for which Contractor or Group Physicians becomes liable, arising out of or related to professional services rendered or which a third party alleges should have been rendered by Contractor or Group Physicians pursuant to this Agreement. Authority's obligation under this paragraph shall extend from the Effective Date and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of professional services Contractor or Group Physicians rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than KMC without approval by the Kern County Hospital Authority Board of Governors and, provided further, that Authority shall have no duty or obligation to defend, indemnify or hold Contractor or Group Physicians harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

24. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is 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.

25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this

Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.

26. **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 “B,” attached hereto and incorporated herein by this reference.

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

28. **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.

29. **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.

30. **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 obtaining 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.

31. **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.

32. **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.

33. **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 of Contractor:

Pacific Gynecologic Specialists
300 West Huntington Drive
Arcadia, California 91007
Attn.: John B. Schlaerth, M.D.

Notice to Authority

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn.: Chief Executive Officer

34. **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.

35. **Sole Agreement.** This Agreement, including all attachments 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.

36. **Termination.**

36.1 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

36.2 **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) Authority determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by Contractor in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or (vi) 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.

37. **Effect of Termination.**

37.1 **Payment Obligations.** In the event of termination of this Agreement for any reason, Authority shall have no further obligation to pay for any services rendered or expenses incurred by Contractor after the effective date of the termination, and Contractor shall be entitled

to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

37.2 **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.

37.3 **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.

37.4 **No Hearing Rights.** Termination of this Agreement by Authority or KMC for any reason shall not provide Contractor or Group Physicians the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

38. **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.

39. **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.

[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.

KERN COUNTY HOSPITAL AUTHORITY PACIFIC GYNECOLOGIC SPECIALISTS

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
John B. Schlaerth, M.D.,
A Medical Corporation
John B. Schlaerth, M.D., Its President
Managing General Partner

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Alan C. Schlaerth, M.D.,
A Medical Corporation
Alan C. Schlaerth, M.D., Its President
General Partner

By _____
VP & General Counsel
Kern County Hospital Authority

Agreement.Pacific Gynecologic Specialists.071219

EXHIBIT "A"
IRS FORM W-9

EXHIBIT “B” 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 such insurance has been expressly waived in writing by Authority. 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 5 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 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.

5. 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.

6. 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.

7. 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 or 3 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.

8. Policy Obligations: Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

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

August 21, 2019

Subject: Comments Regarding Budget Variances – June 2019

Recommended Action: Receive and File

Summary:

The following items have budget variances for the month of June 2019:

Gross Patient Charges:

Gross patient charges and corresponding net patient revenue are substantially under budget for June. This is due in part to difficulties within the hospital information systems that affected all aspects of the revenue cycle process. Average daily census, hospital admissions were low for the month which also affected total gross charges. In addition, several surgeons were on vacation during the month. This accounts for the decrease in surgical procedures performed and the corresponding surgery revenue.

Indigent Funding:

For the indigent funding revenue programs, a \$49 million true-up journal entry was posted for June. The only portion of the total that pertains to current fiscal year 2019 activity is an \$11 million change in estimate for the new Quality Incentive Program (QIP). The \$38 million balance of the adjustment pertains to prior year activity and includes a \$20 million change in estimate for the Managed Care IGT Program, a \$7.7 million change in estimate for the Medi-Cal Quality Assurance Fee Program, a \$6.5 million change in estimate for the Low Income Health Program (LIHP), and a \$4.0 million adjustment due to an under accrual of income in prior year for the AB 915 Outpatient DSH program.

Gain/(Loss) on Health-Related Entity:

A new line item was added to the Kern Medical income statement to account for gains and losses for Kern Medical's investment in the Ambulatory Surgery Center (ASC). As of June 2019, Kern Medical started accounting for the ASC using the equity method of accounting for investments. Each month Kern Medical will obtain an income statement from the ASC. Kern Medical will post a single journal entry each month to recognize the gain or loss recorded by the ASC. A year-to-date true-up entry has been posted for June 2019 to recognize a \$1.5 million year-to-date loss on ASC operations and a corresponding decrease to Kern Medical's investment in the ASC asset on the Kern Medical balance sheet. Kern Medical is working with the ASC bookkeeper to ensure that Kern Medical's financial statements are in agreement with the ASC financial statements for the fiscal year ending June 30, 2019.

Other Operating Revenue:

Other operating revenue has a favorable budget variance for the month due to a year-end true-up for graduate medical graduate education tuition fees and funding received for the Proposition 56 tobacco tax revenue. These funds are allocated to hospitals in California by the Department of Health Care Services as part of the nonfederal share of healthcare expenditures.

Salaries Expense:

Salaries expense has an unfavorable budget variance for June due to a year-to-date true-up for sign-on bonuses.

Registry Nurses:

Registry nurses expense has an unfavorable budget variance for the month and year-to-date. Kern Medical continues to rely on contracted nurse staffing to supplement the nursing departments while maintaining nurse recruiting efforts.

Medical Fees:

Medical fees have a favorable budget variance for the month due to the recognition of reimbursement that Kern Medical received from the Kern County Behavioral Health Department in June for services provided in prior months.

Other Professional Fees:

Other professional fees have a small, unfavorable variance for the month because of slightly higher than average contract labor expenses.

Supplies Expense:

At fiscal year-end each year, inventory counts are conducted in the Materials Management Department, the Pharmacy Department, the Radiology Department, and the Laboratory. The Finance Department assists with these counts and then adjusts the inventory balances in the financial statements accordingly. Overall supplies expense is under budget for the month due to favorable inventory adjustments posted for June. However, the specific line items for pharmaceuticals and prostheses are over budget for the month and have been the main expenses driving the year-to-date unfavorable variance for supplies expense.

Purchased Services:

Purchased services have a small, favorable budget variance for the month due mainly to the relief of over accrued items across many purchased services line items. Additional analyses of expenses and the subsequent relief of some accruals is part of Kern Medical's year-end accounting cycle close process.

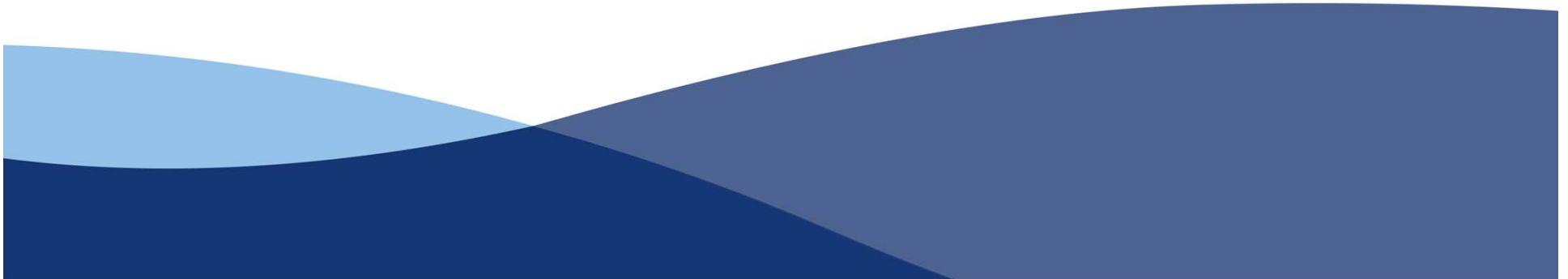
Other Expenses:

Other expenses have a favorable variance for the month due to the reclassification of rental expense for the Ambulatory Surgery Center (ASC) to the investment in ASC account. This entry is part of the year-to-date true-up to make sure that all Kern Medical accounts are in agreement with all ASC accounts at June 30, 2019.



**BOARD OF GOVERNORS' FINANCIAL REPORT
KERN MEDICAL – JUNE 2019**

AUGUST 21, 2019



3-Month Trend Analysis: Revenue & Expense

June 30, 2019

	APRIL	MAY	JUNE	BUDGET JUNE	VARIANCE POS (NEG)	PY JUNE
Gross Patient Revenue	\$ 75,546,695	\$ 73,005,824	\$ 56,817,900	\$ 72,947,256	(22%)	\$ 74,141,642
Contractual Deductions	(57,883,330)	(54,793,527)	(43,227,366)	(54,817,655)	(21%)	(56,803,914)
Net Revenue	17,663,364	18,212,297	13,590,534	18,129,601	(25%)	17,337,727
Indigent Funding	14,579,531	13,536,965	10,743,146	9,577,936	12%	12,879,197
Indigent Funding - Current Year-to-Date Adjustment	0	0	10,842,063	0	0%	0
Correctional Medicine	2,552,068	2,552,068	2,552,068	2,419,175	5%	2,157,165
County Contribution	285,211	285,211	285,211	285,602	(0.1%)	285,211
Incentive Funding	250,000	250,000	250,000	250,000	0%	0
Net Patient Revenue	35,330,175	34,836,541	38,263,022	30,662,315	25%	32,659,300
Gain/(Loss) on Health-Related Entity	0	0	(1,454,296)	0	0%	0
Other Operating Revenue	1,016,761	1,094,655	1,608,974	1,077,592	49%	2,042,686
Other Non-Operating Revenue	(2,269)	32,607	59,261	43,067	38%	239,995
Total Revenue	36,344,667	35,963,803	38,476,961	31,782,974	21%	34,941,982
Expenses						
Salaries	13,467,269	13,818,294	14,100,726	13,290,415	6.1%	12,862,779
Employee Benefits	5,493,952	6,685,268	5,671,236	5,859,852	(3%)	7,665,746
Contract Labor	1,841,979	1,976,993	1,737,099	1,062,977	63%	1,430,534
Medical Fees	1,126,579	1,924,596	1,024,845	1,564,959	(35%)	1,968,988
Other Professional Fees	1,941,121	1,714,717	1,713,174	1,608,837	6%	1,695,930
Supplies	5,209,598	5,156,155	4,356,120	4,444,839	(2%)	4,052,141
Purchased Services	1,458,871	2,318,696	1,904,140	1,862,473	2%	2,662,683
Other Expenses	1,335,329	1,436,109	1,177,538	1,351,805	(13%)	1,411,990
Operating Expenses	31,874,696	35,030,827	31,684,877	31,046,158	2%	33,750,792
Earnings Before Interest, Depreciation, and Amortization (EBIDA) - Current Year Operations	4,469,971	932,976	6,792,084	736,817	822%	1,191,190
EBIDA Margin - Current Year Operations	12%	3%	18%	2%	661%	3%
Interest	96,622	101,978	94,469	50,504	87%	2,731,430
Depreciation	505,281	520,211	562,825	519,292	8%	507,587
Amortization	224,592	76,688	76,688	41,352	85%	50,511
Total Expenses	32,701,192	35,729,704	32,418,858	31,657,306	2.4%	37,040,319
Operating Gain (Loss) - Current Year Operations	3,643,475	234,099	6,058,103	125,669	4,721%	(2,098,337)
Operating Margin - Current Year Operations	10.0%	0.7%	15.7%	0.40%	3,882%	-6.0%
Indigent Funding - Prior Year-to-Date Adjustment	0	0	37,869,353	0	0%	0
EBIDA - Including Prior Year-to-Date Adjustment	0	0	44,661,436	0	0%	0
Operating Gain (Loss) - Including Prior Year-to-Date Adjustment	0	0	43,927,455	0	0%	0

Year-to-Date: Revenue & Expense

June 30, 2019

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Gross Patient Revenue	\$ 849,791,859	887,888,181	-4%	\$ 858,133,912	(1.0%)
Contractual Deductions	(645,050,176)	(665,611,855)	(3%)	(637,319,854)	1.2%
Net Revenue	204,741,683	222,276,326	-8%	220,814,058	
Indigent Funding	155,159,050	114,935,237	35%	114,058,348	36%
Indigent Funding - Current Year-to-Date Adjustment	10,842,063	-	0%	0	0%
Correctional Medicine	29,745,146	29,030,096	2%	23,894,352	24%
County Contribution	3,422,532	3,427,227	(0.1%)	3,422,532	0%
Incentive Funding	6,064,060	3,000,000	102%	0	0%
Net Patient Revenue	409,974,535	372,668,887	10%	362,189,290	13%
Gain/(Loss) on Health-Related Entity	(1,454,296)	0	0%	0	0%
Other Operating Revenue	14,984,519	13,110,707	14%	12,202,384	23%
Other Non-Operating Revenue	410,040	523,986	(22%)	625,640	(34%)
Total Revenue	423,914,797	386,303,580	10%	375,017,314	13%
Expenses					
Salaries	161,398,606	161,541,316	(0%)	147,816,974	9%
Employee Benefits	73,175,362	71,151,068	3%	67,817,881	8%
Contract Labor	19,475,499	13,040,310	49%	14,736,529	32%
Medical Fees	20,382,125	19,000,922	7%	18,239,584	12%
Other Professional Fees	20,913,741	19,306,045	8%	15,815,394	32%
Supplies	60,751,612	54,209,257	12%	53,593,420	13%
Purchased Services	22,871,786	22,660,085	1%	24,163,137	(5%)
Other Expenses	17,451,821	16,446,575	6%	16,686,736	5%
Operating Expenses	396,420,553	377,355,577	5%	358,869,653	10%
Earnings Before Interest, Depreciation, and Amortization (EBIDA) - Current Year Operations	27,494,244	8,948,002	207%	16,147,661	70%
EBIDA Margin - Current Year Operations	6%	2%	180%	4%	51%
Interest	2,884,863	606,047	376%	3,070,013	(6%)
Depreciation	6,215,962	6,231,507	(0%)	6,403,725	(3%)
Amortization	897,543	496,223	81%	456,867	96%
Total Expenses	406,418,921	384,689,354	6%	368,800,258	10%
Operating Gain (Loss) - Current Year Operations	17,495,877	1,614,226	984%	6,217,056	181%
Operating Margin - Current Year Operations	4%	0.4%	888%	2%	149%
Indigent Funding - Prior Year-to-Date Adjustment	37,869,353	0	0%	0	0%
EBIDA - Including Prior Year-to-Date Adjustment	65,363,596	0	0%	0	0%
Operating Gain (Loss) - Including Prior Year-to-Date Adjustment	55,365,229	0	0%	0	0%

3-Month Trend Analysis: Cash Indicators

June 30, 2019

		APRIL	MAY	JUNE	GOALS JUNE	PY JUNE
Cash						
	Total Cash	47,078,080	38,520,292	47,675,581	32,121,434	74,824,823
	Days Cash On Hand	44	33	45	31	67
	Days In A/R - Gross	75.41	71.26	79.82	70.00	71.54
	Patient Cash Collections	\$ 21,679,501	\$ 20,292,514	\$ 13,708,771	\$ 17,198,307	\$ 15,961,517
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)	\$ (42,388,763)	\$ (42,388,763)	\$ (42,388,763)	N/A	\$ (26,851,210)
	Total Kern Medical Responsibility	\$ (56,431,916)	\$ (56,431,916)	\$ (56,431,916)		\$ (40,894,363)
	Total Indigent Funding Liabilites Due to the State	\$ (76,224,618)	\$ (76,224,618)	\$ (76,224,618)	N/A	\$ (60,687,065)

3-Month Trend Analysis: Operating Metrics

June 30, 2019

		APRIL	MAY	JUNE	BUDGET JUNE	VARIANCE POS (NEG)	PY JUNE
Operating Metrics							
Total Expense per Adjusted Admission		18,943	20,797	22,941	20,816	10%	23,758
Total Expense per Adjusted Patient Day		3,733	4,215	4,215	4,008	5%	4,722
Supply Expense per Adjusted Admission		3,018	3,001	3,083	2,923	5%	2,599
Supply Expense per Surgery		2,227	1,867	1,591	1,517	5%	2,565
Supplies as % of Net Patient Revenue		15%	15%	16%	14%	10%	12%
Pharmaceutical Cost per Adjusted Admission		1,499	1,581	1,580	1,292	22%	1,307
Net Revenue Per Adjusted Admission		\$ 10,232	\$ 10,601	\$ 9,617	\$ 11,921	(19%)	\$ 11,121

Year-to-Date: Operating Metrics

June 30, 2019

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Operating Metrics						
	Total Expense per Adjusted Admission	21,341	20,581	4%	23,990	(11%)
	Total Expense per Adjusted Patient Day	4,214	4,095	3%	4,854	(13%)
	Supply Expense per Adjusted Admission	3,190	2,900	10%	3,486	(8%)
	Supply Expense per Surgery	1,951	1,491	31%	1,660	18%
	Supplies as % of Net Patient Revenue	15%	15%	5%	15%	3%
	Pharmaceutical Cost per Adjusted Admission	1,516	1287	18%	1,498	1%
	Net Revenue Per Adjusted Admission	\$ 10,751	11,892	(11%)	\$ 14,364	(25%)

INDIGENT PATIENT CARE FUNDING - MTD & YTD

FOR THE MONTH OF JUNE 30, 2019

MTD ACTUAL	MTD BUDGET	VAR \$ FAV/(UNFAV)	VAR %	DESCRIPTION	YTD ACTUAL	YTD BUDGET	VAR \$ FAV/(UNFAV)	VAR %
7,976,542	316,667	7,659,876	2419%	MEDI-CAL HOSPITAL QUALITY ASSURANCE FEE	11,703,415	3,800,000	7,903,415	208%
19,003,580	1,250,311	17,753,268	1420%	MEDI-CAL RATE-RANGE REVENUE	44,629,402	15,003,737	29,625,664	197%
6,547,536	0	6,547,536	0%	LOW INCOME HEALTH PROGRAM (LIHP)	6,547,536	0	6,547,536	0%
(5,759,230)	158,333	(5,917,563)	-3737%	PHYSICIAN SPA REVENUE	(4,104,646)	1,900,000	(6,004,646)	-316%
4,327,843	292,917	4,034,926	1377%	AB 915 OUTPATIENT SUPPLEMENTAL PROGRAM	9,888,163	3,515,000	6,373,163	181%
3,844,030	2,259,417	1,584,613	70.1%	PRIME - NEW WAIVER	28,697,613	27,113,000	1,584,613	5.8%
5,822,229	2,369,458	3,452,771	145.7%	GPP - NEW WAIVER	33,414,703	28,433,500	4,981,203	17.5%
399,416	1,242,917	(843,501)	-67.9%	WHOLE PERSON CARE	14,071,499	14,915,000	(843,501)	-5.7%
3,707,886	1,064,583	2,643,302	248%	EPP REVENUE	22,748,719	12,775,000	9,973,719	78%
13,584,730	623,333	12,961,397	2079%	QIP REVENUE	36,274,063	7,480,000	28,794,063	385%
59,454,562	9,577,936	49,876,625	521%	SUB-TOTAL - GOVERNMENTAL REVENUE	203,870,465	114,935,237	88,935,228	77%
2,552,068	2,419,175	132,894	5.5%	CORRECTIONAL MEDICINE	29,745,146	29,030,096	715,050	2.5%
285,211	285,602	(391)	-0.1%	COUNTY CONTRIBUTION	3,422,532	3,427,227	(4,695)	-0.1%
62,291,841	12,282,713	50,009,128	407%	TOTAL INDIGENT CARE & COUNTY FUNDING	237,038,144	147,392,560	89,645,583	61%

OTHER REVENUE

FOR THE MONTH JUNE 30, 2019

OTHER OPERATING REVENUE

	<u>MTD ACTUAL</u>	<u>MTD BUDGET</u>	<u>VARIANCE</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>VARIANCE</u>
MEDICAL POSTGRAD EDUCATION TUITION	525,080	273,687	251,393	3,339,020	3,329,861	9,159
STAFF DEVELOPMENT EDUCATION FEES	800	1,152	(352)	4,665	14,020	(9,355)
CAFETERIA REVENUE	75,714	78,698	(2,984)	977,344	957,487	19,858
FINANCE CHARGES-PATIENT AR	10,033	19,265	(9,232)	157,211	234,394	(77,183)
REBATES AND REFUNDS	43,435	81,148	(37,713)	679,157	987,298	(308,142)
DRUG CO. CASH BACK	0	1,343	(1,343)	32,953	16,344	16,608
PHOTOCOPY FEES	4,215	1,938	2,277	36,559	23,574	12,985
MEDICAL RECORDS FEES	22	4,397	(4,375)	17,762	53,493	(35,731)
ADMINISTRATIVE FEES-PAYROLL	158	0	158	936	0	936
PHYSICIAN PROFESSIONAL FEES-ER LOCKBOX	8,763	2,572	6,191	65,083	31,293	33,790
OTHER REVENUE	13,257	37,093	(23,836)	918,846	451,301	467,545
LASER CENTER REVENUE	13,140	49,315	(36,175)	222,655	600,000	(377,345)
CANCELLED OUTLAWED WARRANTS	0	5,330	(5,330)	(15,112)	64,849	(79,961)
GRANTS - KHS	153,472	212,412	(58,940)	2,650,469	2,584,349	66,120
MADDY FUNDS-EMERG MEDICAL SVCS	0	33,360	(33,360)	303,446	405,875	(102,429)
PRIMARY CARE & OTHER INCENTIVE	75	1,988	(1,913)	91,120	24,193	66,926
VETERANS ADMIN REVENUE	2,698	2,963	(265)	42,645	36,047	6,599
JAMISON CENTER MOU	22,222	22,415	(193)	309,508	272,718	36,789
BEHAVIORAL HEALTH MOU	460,934	216,681	244,253	3,636,204	2,636,286	999,919
PATERNITY DECLARATION REV	1,900	1,047	853	14,280	12,735	1,545
PEDIATRIC FORENSIC EXAMS	0	8,014	(8,014)	47,300	97,500	(50,200)
FOUNDATION CONTRIBUTIONS	0	3,421	(3,421)	29,342	41,617	(12,275)
FOUNDATION CONTRIB FOR EQUIPME	26,146	8,802	17,344	194,165	107,092	87,073
PAY FOR PERFORMANCE	0	10,509	(10,509)	287,221	127,855	159,366
PROPOSITION 56 DIRECTED PAYMEN	246,910	0	246,910	941,741	0	941,741
TOTAL OTHER OPERATING REVENUE	1,608,974	1,077,592	531,381	14,984,519	13,110,707	1,873,812

OTHER NON-OPERATING REVENUE

OTHER MISCELLANEOUS REVENUE	788	220	568	7,808	2,681	5,127
INTEREST ON FUND BALANCE	58,473	42,847	15,626	402,232	521,305	(119,074)
TOTAL OTHER NON-OPERATING REVENUE	59,261	43,067	16,194	410,040	523,986	(113,946)

KERN MEDICAL		
BALANCE SHEET		
	June 2019	June 2018
CURRENT ASSETS:		
CASH	\$47,675,581	\$74,824,823
CURRENT ACCOUNTS RECEIVABLE (incl. CLINIC CHARGES RECEIVABLE)	180,133,380	170,742,858
ALLOWANCE FOR UNCOLLECTIBLE RECEIVABLES - CURRENT	(139,309,327)	(127,614,192)
-NET OF CONTRACTUAL ALLOWANCES	40,824,053	43,128,666
CORRECTIONAL MEDICINE RECEIVABLE	2,296,862	1,617,874
MD SPA	1,151,360	5,161,006
HOSPITAL FEE RECEIVABLE	2,136,455	(2,286,198)
CPE - O/P DSH RECEIVABLE	3,515,000	4,644,613
BEHAVIORAL HEALTH MOU	211,078	0
MANAGED CARE IGT (RATE RANGE)	26,507,720	4,330,100
RECEIVABLE FROM LIHP	-	(6,547,536)
OTHER RECEIVABLES	7,399,562	1,891,648
PRIME RECEIVABLE	14,465,095	9,055,029
AB85/75% DEFAULT PCP RECEIVABLE	(809,696)	(9,146,436)
GPP (Global Payment Program)	10,561,146	3,834,883
WPC (Whole Person Care)	7,026,586	5,310,727
EPP (Enhanced Payment Program)	41,748,719	0
QIP (Quality Incentive Program)	36,274,063	0
INTEREST ON FUND BALANCE RECEIVABLE	-	165,600
MANAGED CARE IGT (SPD)	0	(1,907,399)
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 FY13	0	0
WAIVER RECEIVABLE FY15	(11,223,792)	(11,223,792)
WAIVER RECEIVABLE FY16	(2,819,361)	(2,819,361)
PREPAID EXPENSES	3,653,740	3,311,089
PREPAID MORRISON DEPOSIT	813,320	813,320
INVENTORY AT COST	5,587,862	5,347,217
TOTAL CURRENT ASSETS	218,461,656	110,972,176
PROPERTY, PLANT & EQUIPMENT:		
LAND	1,683,786	180,401
EQUIPMENT	52,768,577	51,337,031
BUILDINGS	90,614,739	84,915,514
CONSTRUCTION IN PROGRESS	34,296,803	13,172,196
LESS: ACCUMULATED DEPRECIATION	(95,510,420)	(90,015,664)
NET PROPERTY, PLANT & EQUIPMENT	83,853,485	59,589,479
NET INTANGIBLE ASSETS		
INTANGIBLE ASSETS	14,729,579	13,973,190
ACCUMULATED AMORTIZATION INTANGIBLES	(11,904,779)	(11,007,236)
NET INTANGIBLE ASSETS	2,824,800	2,965,954
LONG-TERM ASSETS:		
LONG-TERM PATIENT ACCOUNTS RECEIVABLE		
DEFERRED OUTFLOWS - PENSIONS	70,895,681	71,752,645
INVESTMENT IN SURGERY CENTER	2,362,719	753,820
CASH HELD BY COP IV TRUSTEE	931,830	922,330
TOTAL LONG-TERM ASSETS	74,190,229	73,428,795
TOTAL ASSETS	\$379,330,170	\$246,956,404

KERN MEDICAL BALANCE SHEET		
	June 2019	June 2018
CURRENT LIABILITIES:		
ACCOUNTS PAYABLE	\$37,799,913	\$16,782,918
ACCRUED SALARIES & EMPLOYEE BENEFITS	28,795,911	22,784,478
INTEREST PAYABLE	5,275,120	4,853,434
OTHER ACCRUALS	4,209,755	2,512,023
CREDIT LINE PAYABLE - PNC BANK	15,000,000	0
CURRENT PORTION - CAPITALIZED LEASES	3,897,796	2,500,320
CURR LIAB - COP 2011 PAYABLE	1,131,693	1,085,718
CURR LIAB - P.O.B.	3,128,950	2,888,476
MEDICARE COST REPORT LIABILITY PAYABLE	0	3,094,510
MEDI-CAL COST REPORT LIABILITY	389,631	1,070,179
INDIGENT FUNDING PAYABLE	8,613,444	13,530,649
DSH PAYABLE	42,388,763	26,851,210
CREDIT BALANCES PAYABLES	4,043,249	3,090,211
DEFERRED REVENUE - COUNTY CONTRIBUTION	7,957	2,090,345
TOTAL CURRENT LIABILITIES	154,682,181	103,134,473
LONG-TERM LIABILITIES:		
LONG-TERM LIABILITY-COP 2011	0	1,131,693
NET UNAMORTIZED DISCOUNT COP	19,993	39,985
LONG-TERM LIABILITY - CAPITAL LEASES	2,405,930	3,682,609
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	12,745,786	14,842,004
L.T. LIAB. - P.O.B. INTEREST PAYABLE 03	4,763,410	4,329,041
L.T. P.O.B. PAYABLE 95	7,535,194	11,590,866
L.T. P.O.B. PAYABLE 08	5,392,893	5,392,893
ACCRUED PROFESSIONAL LIABILITY	6,608,394	5,465,597
ACCRUED WORKERS' COMPENSATION PAYABLE	8,511,000	6,773,000
DEFERRED INFLOWS - PENSIONS	69,247,058	22,238,926
PENSION OBLIGATION BOND PAYABLE	1,610,473	2,643,205
ACCRUED COMPENSATED ABSENCES	3,830,085	3,830,085
TOTAL LONG-TERM LIABILITIES	420,231,719	416,096,552
NET POSITION		
RETAINED EARNINGS - CURRENT YEAR	36,714,021	39,814,215
RETAINED EARNINGS - PRIOR YEAR	(232,297,751)	(312,088,836)
TOTAL NET POSITION	(195,583,730)	(272,274,621)
TOTAL LIABILITIES & NET POSITION	\$379,330,170	\$246,956,404



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

August 21, 2019

Subject: Kern County Hospital Authority, Chief Executive Officer Report

Recommended Action: Receive and File

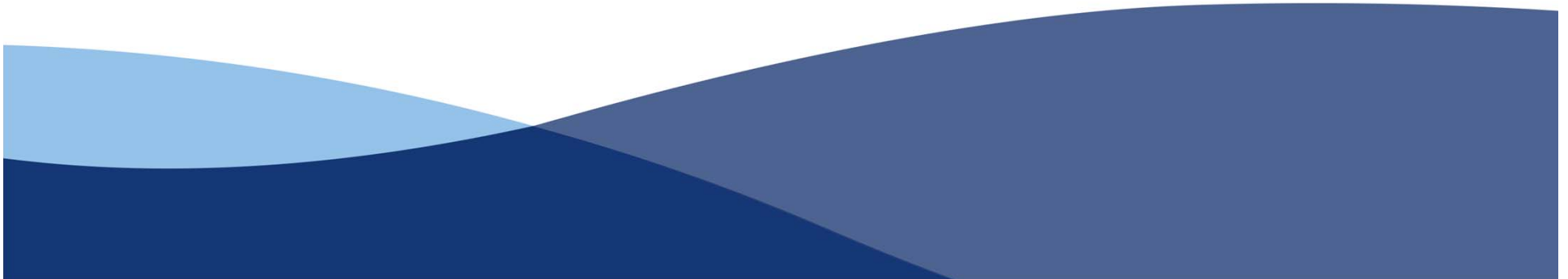
Summary:

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 – JUNE 2019**

AUGUST 21, 2019



3-Month Trend Analysis: Volume and Strategic Indicators

June 30, 2019

		APRIL	MAY	JUNE	BUDGET JUNE	VARIANCE POS (NEG)	PY JUNE
VOLUME							
	Adjusted Admissions (AA)	1,726	1,718	1,413	1,521	(7%)	1,559
	Adjusted Patient Days	8,761	8,477	7,691	7,898	(3%)	7,844
	Admissions	775	807	690	824	(16%)	767
	Average Daily Census	131	128	121	138	(12%)	129
	Patient Days	3,933	3,982	3,755	4,277	(12%)	3,859
	Available Occupancy %	61.3%	60.0%	56.6%	64.5%	(12%)	60.1%
	Average LOS	5.1	4.9	5.4	5.2	5%	5.0
	Surgeries						
	Inpatient Surgeries (Main Campus)	201	204	167	219	(24%)	219
	Outpatient Surgeries (Main Campus)	303	282	259	246	5%	246
	Outpatient Surgeries (Surgery Center)	2	9	22	0	0%	0
	Total Surgeries	506	495	448	465	(4%)	465
	Births	209	200	192	212	(9%)	189
	ER Visits						
	Admissions	407	443	329	423	(22%)	396
	Treated & Released	3,900	3,940	3,907	4,028	(3%)	3,672
	Total ER Visits	4,307	4,383	4,236	4,451	(5%)	4,068
	Trauma Activations	219	223	275	234	17%	215
	Outpatient Clinic Visits						
	Total Clinic Visits	14,797	14,431	12,777	12,333	4%	12,294
	Total Unique Patient Clinic Visits	10,685	10,459	9,474	9,112	4%	9,083
	New Unique Patient Clinic Visits	1,985	1,847	1,326	1,780	(25%)	1,774

Year-to-Date: Volume and Strategic Indicators

June 30, 2019

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
VOLUME						
	Adjusted Admissions (AA)	19,044	18,692	2%	15,373	24%
	Adjusted Patient Days	96,447	93,940	3%	75,981	27%
	Admissions	9,425	10,205	(8%)	8,193	15%
	Average Daily Census	130	141	(7%)	112	17%
	Patient Days	47,732	51,289	(7%)	40,703	17%
	Available Occupancy %	66.6%	66%	1%	52.1%	28%
	Average LOS	5.1	5.0	1%	5.0	2%
	Surgeries					
	Inpatient Surgeries (Main Campus)	2,298	2,799	(18%)	2,792	(18%)
	Outpatient Surgeries (Main Campus)	3,110	2,956	5%	2,949	5%
	Outpatient Surgeries (Surgery Center)	35	0	0%	0	0%
	Total Surgeries	5,443	5,755	(5%)	5,741	(5%)
	Births	2,634	2,628	0.2%	2,464	7%
	ER Visits					
	Admissions	4,870	5,058	(4%)	5,156	(6%)
	Treated & Released	45,894	48,180	(5%)	43,956	4%
	Total ER Visits	50,764	53,238	(5%)	49,112	3.4%
	Trauma Activations	2,720	2,801	(3%)	2,923	(7%)
	Outpatient Clinic Visits					
	Total Clinic Visits	160,422	147,562	9%	143,934	11%
	Total Unique Patient Clinic Visits	118,675	112,801	5%	109,869	8%
	New Unique Patient Clinic Visits	21,638	23,021	(6%)	22,725	(5%)

3-Month Trend Analysis: Payor Mix

June 30, 2019

		APRIL	MAY	JUNE	BUDGET JUNE	VARIANCE POS (NEG)	PY JUNE
PAYOR MIX - Charges							
	Commercial FFS/HMO/PPO	7.8%	10.5%	9.2%	10.4%	(12%)	8.9%
	Medi-Cal	30.6%	29.8%	31.0%	30.0%	3%	31.5%
	Medi-Cal HMO - Kern Health Systems	31.4%	30.6%	31.8%	30.8%	3%	32.4%
	Medi-Cal HMO - Health Net	9.2%	9.0%	9.3%	9.0%	3%	9.5%
	Medi-Cal HMO - Other	1.1%	1.1%	1.1%	0.4%	167%	1.1%
	Medicare	9.8%	10.3%	8.5%	10.2%	(16%)	8.6%
	Medicare - HMO	4.2%	3.2%	2.2%	2.1%	6%	2.5%
	County Programs	0.3%	0.4%	0.4%	0.3%	41%	0.3%
	Workers' Compensation	0.52%	0.69%	0.82%	0.5%	70%	0.9%
	Self Pay	4.9%	4.5%	5.7%	6.4%	(11%)	4.2%
	Total	100.0%	100.0%	100.0%	100.0%		100.0%

Year-to-Date: Payor Mix

June 30, 2019

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
PAYOR MIX - Charges						
	Commercial FFS/HMO/PPO	8.3%	10.4%	(20%)	10.7%	(23%)
	Medi-Cal	30.2%	30%	1%	30.1%	0.5%
	Medi-Cal HMO - Kern Health Systems	31.0%	31%	1%	30.9%	0.5%
	Medi-Cal HMO - Health Net	9.1%	9%	1%	9.1%	0.5%
	Medi-Cal HMO - Other	1.1%	0%	161%	1.1%	0.5%
	Medicare	10.0%	10%	(3%)	10.0%	(0.04%)
	Medicare - HMO	3.3%	2%	58%	2.1%	57%
	County Programs	0.3%	0.3%	21%	0.5%	(38%)
	Workers' Compensation	0.4%	0.5%	(15%)	0.8%	(50%)
	Self Pay	6.3%	6%	0.1%	4.8%	31%
	Total	100.0%	100%		100.0%	

3-Month Trend Analysis: Labor and Productivity Metrics

June 30, 2019

	APRIL	MAY	JUNE	BUDGET JUNE	VARIANCE POS (NEG)	PY JUNE
Labor Metrics						
Productive FTEs	1,484.14	1,500.69	1,442.80	1,474.96	(2.2%)	1,387.88
Non-Productive FTEs	194.60	189.07	229.21	213.95	7%	237.97
Contract Labor FTEs	122.20	123.71	96.52	76.43	26%	85.05
Total FTEs	1,678.74	1,689.76	1,672.01	1,688.91	(1%)	1,625.85
FTEs Per AOB Paid	5.75	6.18	6.06	5.61	8%	6.22
FTEs Per AOB Worked	5.08	5.49	5.23	4.90	7%	5.31
Labor Cost/FTE (Annualized)	133,121.31	142,940.15	138,709.05	129,050.22	7%	145,725.82
Benefits Expense as a % of Benefitted Labor Expense	55%	64%	55%	59%	(7%)	60%
Salaries & Benefits as % of Net Patient Revenue	59%	65%	28%	66%	(57%)	67%

Year-to-Date: Labor and Productivity Metrics

June 30, 2019

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Labor Metrics						
	Productive FTEs	1,442.18	1,479.19	(3%)	1,371.94	5%
	Non-Productive FTEs	218.27	214.47	2%	213.61	2%
	Contract Labor FTEs	108.67	77.07	41%	87.15	25%
	Total FTEs	1,660.45	1,693.66	(2%)	1,585.55	5%
	FTEs Per AOB Paid	6.34	5.47	16%	6.31	0.5%
	FTEs Per AOB Worked	5.51	4.78	15%	5.46	1%
	Labor Cost/FTE (Annualized)	136,959.17	130,409	5%	130,496.89	5%
	Benefits Expense as a % of Benefitted Labor Expense	61%	59%	3%	61%	(0.3%)
	Salaries & Benefits as % of Net Patient Revenue	57%	66%	(14%)	64%	(11%)

**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 August 21, 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)) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on August 21, 2019, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

 X CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Eric vanSonnenberg,
M.D. v. County of Kern, et al., Kern County Superior Court Case No. BCV-15-
100859 TSC –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on August 21, 2019, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

 X CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 v. County of Kern, et al., Public Employment Relations Board Case No. LA-CE-1084-M –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on August 21, 2019, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

- X CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Government Code Section 54956.9(d)(2), (e)(2).) Number of cases: Two (2) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs

**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 August 21, 2019, to consider:

 X PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –

**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 August 21, 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)) –