



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, March 17, 2021

11:30 A.M.

BOARD TO RECONVENE

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz
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 Kern County Hospital Authority Board of Governors on its fifth anniversary –

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meetings on February 17, 2021 –
APPROVE

CA

- 5) Proposed Agreement with Matthew M. Malerich, M.D., Incorporated, an independent contractor, for professional medical services in the Department of Surgery from April 9, 2021 through April 8, 2023, in an amount not to exceed \$1,200,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Agreement with Desert Hand and Plastic Surgery PC, an independent contractor, for professional medical services in the Department of Surgery from April 9, 2021 through April 8, 2023, in an amount not to exceed \$1,200,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Agreement with Ralph Garcia-Pacheco Suarez, M.D., a contract employee, for professional medical services in the Department of Medicine from June 1, 2021 through May 31, 2024, in an amount not to exceed \$1,560,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Amendment No. 4 to Agreement 07616 with KSA Group Architects, LLP, an independent contractor, for engineering and architectural services for the period July 1, 2016 through June 30, 2021, extending the term for three years from July 1, 2021 through June 30, 2024, and increasing the maximum payable by \$100,000, from \$700,000 to \$800,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed retroactive Amendment No. 7 to Agreement 472-2009 with Morrison Management Specialists, Inc., dba Morrison Health Care, Inc., an independent contractor, for dietary and nutrition services for the period June 27, 2009 through June 26, 2023, increasing the maximum payable for the period June 27, 2018 through June 26, 2023 by \$7,776,693, from \$6,798,536 to \$14,575,299, effective December 1, 2020 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Resolution reaffirming the commitment of the Board of Governors to patient safety at Kern Medical Center –
APPROVE; ADOPT RESOLUTION; DIRECT STAFF TO IMPLEMENT SAFETY PLAN

CA

- 11) Proposed Services Agreement with Craneware plc, an independent contractor, containing non-standard terms and conditions, for re-templating of the Chargemaster and Physician Revenue Toolkit from March 17, 2021 through March 16, 2022, in an amount not exceed \$9,400 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed renewal and binding of all-risk property insurance through PRISM and earthquake coverage through Specialty Risk Underwriters and Evanston Insurance Company from March 31, 2021 through March 31, 2022, with option to finance the earthquake premium through IPFS Corporation of California in an amount not to exceed \$585,217 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN PREMIUM FINANCE AGREEMENT AND CERTIFICATE OF INCUMBENCY

- 13) Kern County Hospital Authority financial report –
RECEIVE AND FILE

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

CA

- 15) Claims and Lawsuits Filed as of February 28, 2021 –
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) 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, APRIL 21, 2021 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

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

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

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

15) CLAIMS AND LAWSUITS FILED AS OF FEBRUARY 28, 2021 –
RECEIVE AND FILE

- A) Complaint in the matter of Service Employees International Union, Local 521, Charging Party, v. Kern Medical Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1451-M
- B) In the Matter of the Accusation Against County of Kern, DBA Kern Medical Center Campus Pharmacy, et al., Respondents, Before the Board of Pharmacy, Department of Consumer Affairs, Case No. 7026
- C) Claim in the matter of Shawn Robison



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, February 17, 2021

11:30 A.M.

BOARD RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz
Roll Call: 4 Present; 2 Absent - Alsop, Berjis

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

- 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))

CHAIRMAN BIGLER REMARKED ON A RECENT ARTICLE IN THE BAKERSFIELD CALIFORNIAN FOLLOWING RECEIPT BY KERN MEDICAL CENTER OF GRANT FUNDS FROM CalMedForce TOTALING APPROXIMATELY \$1.2 MILLION TO IMPROVE THREE OF ITS POSTGRADUATE TRAINING PROGRAMS

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for Kern County Hospital Authority Board of Governors regular meetings on January 20, 2021 –
APPROVED
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 4) Proposed Agreement with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for construction management services related to the 4th Floor Pediatric and Postpartum Renovation Phase II project, in an amount not to exceed \$1,539,536, effective February 17, 2021 –
MADE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 006-2021; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE ANY FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 5) Proposed retroactive Amendment No. 1 to Agreement 006-2020 with Neurodiagnostic Workforce LLC, an independent contractor, for neurodiagnostic monitoring services for the period February 12, 2020 through February 11, 2021, extending the term for one year from February 12, 2021 through February 11, 2022, and increasing the maximum payable by \$376,000, from \$376,000 to \$752,000, to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 007-2021
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 6) Proposed Agreement with Arturo Gomez, M.D., a contract employee, for professional medical services in the Department of Surgery, Division of Orthopedic Surgery from March 16, 2021 through March 15, 2024, in an amount not to exceed \$3,690,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 008-2021
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 7) Proposed Amendment No. 1 to Agreement 017-2020 with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology for the period April 1, 2020 through March 31, 2021, extending the term for one year from April 1, 2021 through March 31, 2022, and increasing the maximum payable by \$375,000, from \$375,000 to \$775,000, to cover the extended term, effective February 17, 2021 – APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 009-2021
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 8) Proposed Amendment No. 3 to Agreement 27716 with Hill-Rom Company, Inc., an independent contractor, for annual software upgrade, technical support and preventive maintenance services related to the 2C nurse call system project for the period November 17, 2016 until project completion, increasing the maximum payable by \$10,929, from \$646,107 to \$657,037, to cover the cost of additional services, effective February 17, 2021 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 010-2021
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 9) Proposed Product Sale Agreement with Medtronic USA, Inc., an independent contractor, for the purchase of implantable cardiac devices from February 17, 2021 through February 16, 2023, in an amount not to exceed \$3,000,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 011-2021
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 10) Proposed retroactive 340B Pharmacy Services Agreement with Optum Pharmacy 702, LLC, an independent contractor, containing non-standard terms and conditions, for 340B drug pricing on compounded pharmaceuticals from January 15, 2021 through January 14, 2024 – APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 012-2021
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 11) Proposed Amendment No. 3 to Agreement 36719 with Sepideh Babaei, M.D., a contract employee, for professional medical services in the Department of Radiology for the period July 7, 2018 through July 6, 2021, increasing the maximum payable by \$255,000, from \$1,495,000 to \$1,750,000, to cover the term, effective February 17, 2021 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 013-2021
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 12) Request to employ retired Kern County Hospital Authority employees during the COVID-19 pandemic in compliance with Executive Order N-25-20 issued by Governor Gavin Newsome on March 4, 2020 – APPROVED
Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 13) Proposed retroactive Agreement with the State of California, as represented by the California Emergency Medical Services Authority, an independent contractor, for supplemental contracted healthcare workers during the COVID-19 pandemic from February 5, 2021 until terminated, in an amount not to exceed \$760,000 –
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 014-2021

Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

- 14) Kern County Hospital Authority financial report –
RECEIVED AND FILED

Pelz-Brar: 4 Ayes; 2 Absent - Alsop, Berjis

- 15) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED

McLaughlin-Brar; 4 Ayes; 2 Absent - Alsop, Berjis

CA

- 16) Claims and Lawsuits Filed as of January 31, 2021 –
RECEIVED AND FILED

Brar-Pelz: 4 Ayes; 2 Absent - Alsop, Berjis

ADJOURNED TO CLOSED SESSION
Pelz - McLaughlin

CLOSED SESSION

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

- 18) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Shine Villanueva, an individual v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-19-101706 TSC – SEE RESULTS BELOW

- 19) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital Authority, a Governmental entity v. California Department of Corrections and Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL – SEE RESULTS BELOW

- 20) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: In the Matter of the Accusation Against County of Kern, California, DBA Kern Medical Center Campus Pharmacy, et al., Respondents, Case No. 7026 – SEE RESULTS BELOW

- 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)) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Brar - McLaughlin

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 17 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR BRAR; 2 ABSENT - DIRECTORS ALSOP AND BERJIS), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, AND REVIEW/RELEASE OF PROCTORING; NO OTHER REPORTABLE ACTION TAKEN

Item No. 18 concerning CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Shine Villanueva, an individual v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-19-101706 TSC – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 19 concerning CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Kern County Hospital Authority, a Governmental entity v. California Department of Corrections and Rehabilitation, et al., Kern County Superior Court Case No. BCV-20-102979 DRL – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 20 concerning CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: In the Matter of the Accusation Against County of Kern, California, DBA Kern Medical Center Campus Pharmacy, et al., Respondents, Case No. 7026 – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 21 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, MARCH 17, 2021 AT 11:30 A.M.

Pelz

/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**

March 17, 2021

Subject: Proposed Agreement with Matthew M. Malerich, M.D., Incorporated, for Professional Medical Services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board to approve the proposed Agreement with Matthew M. Malerich, M.D., Incorporated, an independent contractor, for professional medical services in the Department of Surgery. Dr. Malerich provides coverage for hand-related clinic, surgical, and emergency call services as well as clinical mentoring to and evaluation of residents and medical students assigned to the hand surgery service. The agreement permits Dr. Malerich to bill and collect for professional services for the Stockdale clinic only.

Therefore, it is recommended that your Board approve the agreement with Matthew Malerich, M.D., for professional medical services in the Department of Surgery from April 9, 2021 through April 8, 2023, in an amount not to exceed \$1,200,000.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Matthew M. Malerich, M.D., Incorporated)**

This Agreement is made and entered into this ____ day of _____, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Matthew M. Malerich, M.D., Incorporated, a California professional medical corporation (“Contractor”), with its principal place of business located at 2634 G Street, Bakersfield, California 93301.

**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 Surgery (the “Department”); and

(c) Contractor is a California professional medical corporation with medical doctors (collectively, “Group Physicians” or individually, “Group Physician”) who provide services on behalf of Contractor; 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 be for a period of two (2) years, commencing as of April 9, 2021 (the “Commencement Date”), and shall end April 8, 2023, unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor through Group Physicians agrees to provide orthopedic hand and related surgical services 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 **Clinical Responsibilities.** Contractor through Group Physicians shall: (i) provide coverage for hand-related clinic, surgical, and emergency call services; (ii) provide a minimum of six (6) half-day clinics at the Stockdale clinic; (iii) provide a minimum of one (1) full day per week in the operating room at KMC or a KMC-designated surgery center; (iv) in coordination with specialists providing hand-related services, arrange and ensure provision of on-call professional services for hand clinic patients 24/7, including holidays; (v) in coordination with specialists providing hand-related services, arrange and ensure provision of emergency hand call coverage 24/7, including holidays, and respond to KMC for emergency hand-related services when on call; (vi) perform emergency hand-related surgical procedures when on call; (vii) supervise mid-level providers; (viii) supervise residents and medical students assigned to the hand surgery service; (ix) supervise procedures performed by residents and mid-level providers; (x) perform therapeutic and diagnostic procedures within the scope of practice for a hand specialist; and (xi) assist in the evaluation and, if feasible, the development of a fresh fracture clinic at the Stockdale clinic.

2.1.2 **Teaching.** Contractor through Group Physicians shall provide didactic lectures as mutually agreed upon between Contractor and the Department residency program director.

2.1.3 **Medical Education; Academic Responsibilities.** Contractor through Group Physicians shall: (i) provide clinical mentoring to and evaluation of residents and medical students; (ii) maintain board certification in orthopedic surgery; and (iii) maintain an academic appointment at one or more approved California-based medical schools.

2.1.4 **Committee Assignments.** Contractor and Group Physicians shall: (i) attend Department staff meetings and the annual medical staff meeting; and (ii) participate in medical staff committees as assigned by the president of the medical staff.

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) terminate this Agreement pursuant to the provisions of section 36; or (c) 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, Matthew M. Malerich, 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 orthopedic surgery, and certified by the American Board of Orthopaedic Surgery in orthopedic surgery-general, and maintain such certification 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) major trauma experience at a level I or II trauma center, (ii) general orthopedic surgery experience in trauma, (iii) experience with severe trauma cases, (iv) 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 (v) ongoing acute care hospital experience.

2.7 Rights and Duties. Matthew M. Malerich, M.D. shall act as the authorized agent for Contractor in all matters relating to the performance of Group Physicians under this Agreement. 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 each 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 Medical Supplies; Drugs. The parties agree that Contractor shall be solely responsible for the purchase of medical supplies and drugs with a cost that exceeds \$100 per single device or medical supplies or single unit dose for drugs.

2.14 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 will pay Contractor in accordance with the fee schedule set forth in this paragraph 4.1. All services are payable in arrears.

4.1.1 Stockdale Location. Contractor shall be responsible to bill patients and third-party payers for all professional services rendered by Contractor and Group Physicians at 9300 Stockdale Highway, Bakersfield, California (“Stockdale Location”). Such billing shall comply with all applicable state and federal laws and is subject to the provisions of section 4.5 herein.

4.1.2 Emergency Call Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per day for scheduled emergency hand call coverage (excluding established patients).

4.1.3 KMC Clinic Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per day for scheduled coverage in the outpatient hand clinic at KMC.

4.1.4 KMC Operating Room Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per 24-hour day for surgical procedures performed in the operating room at KMC.

4.1.5 Maximum Payable. The maximum payable under this Agreement will not exceed \$1,200,000 over the two-year term of this Agreement.

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

4.2 Limitations on Compensation. Except as otherwise provided in paragraph 4.1 hereof, neither Contractor nor any Group Physician shall be entitled to any salary or other compensation from Authority or KMC, or to any employee benefits provided by KMC, including disability, life insurance, pension and annuity benefits, educational allowances, professional membership dues, and sick, holiday or vacation pay. Neither Authority nor KMC will withhold income taxes or pay Social Security or unemployment taxes for Contractor or any Group

Physician, all such being the exclusive responsibility of Contractor and Group Physicians, which Contractor and Group Physicians agree to discharge fully.

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 Billing and Collection.

4.5.1 Group Billing and Charges. Contractor shall be solely responsible for the processing, billing and collection of all charges to patients and third-party payers separately from KMC for the amount of the professional (i.e., "physician services") component of the services provided by Contractor hereunder at the Stockdale Location. Contractor expressly agrees as follows:

1) Schedule of Charges. Contractor shall submit at least annually to KMC the current schedule of charges for services provided by Contractor at the Stockdale Location and shall notify KMC of any changes in that charge schedule.

2) Prevailing Charges. Contractor shall be responsible for establishing the schedule of charges for the professional component of the services provided by Contractor at the Stockdale Location. The professional charges to patients for services provided by Contractor at the Stockdale Location shall be competitive with the prevailing charges in the medical community for similar services.

3) Hospital Charges. KMC shall establish the amounts to be charged to patients for the "hospital services" component of the services rendered at the Stockdale Location and shall bill patients and third-party payers separately from Contractor for the amount of the hospital services component of services rendered.

4) Billing Generally. Each party, at its own cost, shall be responsible for processing, billing and collecting from patients or third-party payers for services rendered at the Stockdale Location. In the conduct of its billing and collection practices and procedures, each party agrees that it will not, nor will it permit its employees or agents to, engage in any action that would violate federal, state or local law, including fair debt collection practices, reimbursement and state and federal anti-fraud and abuse laws.

5) Billing Compliance. Contractor shall comply, and shall ensure that Group Physicians comply, with all applicable laws in connection with billing and coding for professional services provided by Contractor or Group Physicians pursuant to this Agreement. Contractor shall adopt and maintain billing and coding compliance policies and procedures to ensure Contractor's compliance with applicable state and federal laws. KMC shall have reasonable access to Contractor's billing records in order to assure Contractor's compliance with this Agreement. Contractor shall promptly correct any billing errors documented by KMC.

4.5.2 Reconciliation. It is the intention of the parties that Authority be compensated and reimbursed for the allocated costs of the services and facilities provided by KMC to Contractor pursuant to this Agreement. Accordingly, on a monthly basis KMC shall review Contractor's records to reconcile the amounts collected by Contractor for professional services rendered by Contractor and Group Physicians at the Stockdale Location. The parties agree that a reasonable allocated cost of the services and facilities provided by KMC for the benefit of Contractor and Group Physicians pursuant to this Agreement is 20% of collected professional fees (the "Monthly Fee"). The Monthly Fee shall be paid by Contractor to KMC within 30 days following completion of each monthly reconciliation.

4.5.3 Copayment Collection Services.

1) Appointment of KMC as Collection Agent. Contractor acknowledges and agrees that KMC shall serve as its agent solely for the purpose of collecting copayments from patients for the professional component of services provided by Contractor and Group Physicians pursuant to this Agreement ("Copayments"). Contractor shall retain all legal right and claim to, and interest in, the Copayments. Contractor acknowledges and agrees that such appointment in no way guarantees collection or payment of the Copayments or otherwise imposes on Authority or KMC any obligation to pay Contractor for Copayments.

2) Scope of Copayment Collection Services. As collection agent for Contractor, KMC shall: (a) collect Copayments by cash, check, or credit card; (b) submit collected Copayments to Contractor's billing service; and (c) employ or contract with and train personnel to carry out any of the tasks described herein (collectively, the "Copayment Collection Services"). KMC shall provide Copayment Collection Services in accordance with its policies and procedures. Contractor shall coordinate and assist KMC as necessary for KMC's performance of the Copayment Collection Services.

3) Indemnification. Contractor shall indemnify and hold harmless Authority and KMC, and their respective directors, officers, employees, or agents, from and against any and all claims, causes of action, liabilities, losses, damages, penalties, assessments, judgments, awards, or costs, including reasonable attorneys' fees and costs (including the reasonable costs of Authority's in-house

counsel), arising out of, resulting from, or relating to the provision of Copayment Collection Services.

4.5.4 Access to Records. The parties agree to permit each other's accountants and other appropriate representatives to have reasonable access during normal working hours to billing, patient, and reimbursement records relating to the professional services rendered by Contractor and Group Physicians at the Stockdale Location for purposes of, and to the extent necessary to perform, billing, collection and accounting function. Upon reasonable request, a party shall provide to the other appropriate billing information, including patient name and address, guarantor name and address, and insurance or other third-party payer information to assist the requesting party in billing and collection efforts.

4.6 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 to KMC patients at KMC (excluding the Stockdale Location) during the term of this Agreement. All such professional fees generated by Contractor 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 and whether received during the term of this Agreement or anytime thereafter. Contractor hereby assigns 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.

4.7 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 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 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 **Patient Information.** Contractor agrees not disclose, and will ensure that Group Physicians 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 will comply, and will ensure that Group Physicians will comply, with all federal and state laws and regulations, all rules, regulations and policies of KMC and its Medical Staff, 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. By signing and/or acknowledging 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”) and agree to comply with and execute the Business Associate Agreement set forth in Exhibit “C,” attached hereto and incorporated herein by this reference.

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 Commencement 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 to Contractor:

Matthew M. Malerich, M.D., Incorporated
P.O. Box 1927
Bakersfield, California 93303
Attn.: Its President

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 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 will 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 30 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 30 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.

36.2 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon 120 days' prior written notice to the other party.

36.3 **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) 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; (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; or (vii) the failure of Contractor to cure a default within the time allowed in paragraph 36.1.

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.

MATTHEW M. MALERICH, M.D.,
INCORPORATED

By _____
Matthew M. Malerich, M.D.
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Malerich.030521

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: \$300,000 per person for bodily injury; \$300,000 per incident for bodily injury; \$100,000 per incident 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. Waiver of Subrogation: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.

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.

[Intentionally left blank]

**EXHIBIT “C”
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority, a local unit of government, on behalf of Kern Medical Center (“**Covered Entity**”), and Matthew M. Malerich, M.D., Incorporated, a California professional medical corporation (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of April 9, 2021 (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 twenty-four (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 fifteen (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 fifteen (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 thirty (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, limits 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 ten (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 thirty (30) calendar days written notice to Business Associate; or

4.3.2 Upon thirty (30) calendar day 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; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Matthew M. Malerich, M.D., Incorporated
2634 G Street
Bakersfield, CA 93301
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 of Kern County, 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.

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:

Matthew M. Malerich, M.D., Incorporated

Title: Chairman, Board of Governors

Date: _____

Title: Its President

Date: _____



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

March 17, 2021

Subject: Proposed Agreement with Desert Hand and Plastic Surgery PC, for Professional Medical Services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board to approve the proposed Agreement with Desert Hand and Plastic Surgery PC, an independent contractor for professional medical services in the Department of Surgery. Dr. Bowen provides coverage for hand-related clinic, surgical, and emergency call services as well as clinical mentoring to and evaluation of residents and medical students assigned to the hand surgery service. The agreement permits Dr. Bowen to bill and collect for professional services for the Stockdale clinic only.

Therefore, it is recommended that your Board approve the agreement with Desert Hand and Plastic Surgery PC, for professional medical services in the Department of Surgery from April 9, 2021 through April 8, 2023, in an amount not to exceed \$1,200,000.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Desert Hand and Plastic Surgery PC)**

This Agreement is made and entered into this ____ day of _____, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Desert Hand and Plastic Surgery PC, a California professional medical corporation (“Contractor”), with its principal place of business located at 38600 Lobelia Circle, Palm Desert, California 92211.

**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 Surgery (the “Department”); and

(c) Contractor is a California professional medical corporation with medical doctors (collectively, “Group Physicians” or individually, “Group Physician”) who provide services on behalf of Contractor; 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 be for a period of two (2) years, commencing as of April 9, 2021 (the “Commencement Date”), and shall end April 8, 2023, unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor through Group Physicians agrees to provide orthopedic hand and related surgical services 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 **Clinical Responsibilities.** Contractor through Group Physicians shall: (i) provide coverage for hand-related clinic, surgical, and emergency call services; (ii) provide a minimum of six (6) half-day clinics at the Stockdale clinic; (iii) provide a minimum of one (1) full day per week in the operating room at KMC or a KMC-designated surgery center; (iv) in coordination with specialists providing hand-related services, arrange and ensure provision of on-call professional services for hand clinic patients 24/7, including holidays; (v) in coordination with specialists providing hand-related services, arrange and ensure provision of emergency hand call coverage 24/7, including holidays, and respond to KMC for emergency hand-related services when on call; (vi) perform emergency hand-related surgical procedures when on call; (vii) supervise mid-level providers; (viii) supervise residents and medical students assigned to the hand surgery service; (ix) supervise procedures performed by residents and mid-level providers; (x) perform therapeutic and diagnostic procedures within the scope of practice for a hand specialist; and (xi) assist in the evaluation and, if feasible, the development of a fresh fracture clinic at the Stockdale clinic.

2.1.2 **Teaching.** Contractor through Group Physicians shall provide didactic lectures as mutually agreed upon between Contractor and the Department residency program director.

2.1.3 **Medical Education; Academic Responsibilities.** Contractor through Group Physicians shall: (i) provide clinical mentoring to and evaluation of residents and medical students; (ii) maintain board certification in orthopedic surgery; and (iii) maintain an academic appointment at one or more approved California-based medical schools.

2.1.4 **Committee Assignments.** Contractor and Group Physicians shall: (i) attend Department staff meetings and the annual medical staff meeting; and (ii) participate in medical staff committees as assigned by the president of the medical staff.

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) terminate this Agreement pursuant to the provisions of section 36; or (c) 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, David T. Bowen, 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 plastic surgery, and certified by the American Board of Plastic Surgery in plastic surgery-general, and maintain such certification 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) major trauma experience at a level I or II trauma center, (ii) general plastic and reconstructive surgery experience in trauma, (iii) experience with severe trauma cases, (iv) 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 (v) ongoing acute care hospital experience.

2.7 Rights and Duties. David T. Bowen, M.D. shall act as the authorized agent for Contractor in all matters relating to the performance of Group Physicians under this Agreement. 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 each 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 Medical Supplies; Drugs. The parties agree that Contractor shall be solely responsible for the purchase of medical supplies and drugs with a cost that exceeds \$100 per single device or medical supplies or single unit dose for drugs.

2.14 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 will pay Contractor in accordance with the fee schedule set forth in this paragraph 4.1. All services are payable in arrears.

4.1.1 Stockdale Location. Contractor shall be responsible to bill patients and third-party payers for all professional services rendered by Contractor and Group Physicians at 9300 Stockdale Highway, Bakersfield, California (“Stockdale Location”). Such billing shall comply with all applicable state and federal laws and is subject to the provisions of section 4.5 herein.

4.1.2 Emergency Call Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per day for scheduled emergency hand call coverage (excluding established patients).

4.1.3 KMC Clinic Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per day for scheduled coverage in the outpatient hand clinic at KMC.

4.1.4 KMC Operating Room Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per 24-hour day for surgical procedures performed in the operating room at KMC.

4.1.5 Maximum Payable. The maximum payable under this Agreement will not exceed \$1,200,000 over the two-year term of this Agreement.

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

4.2 Limitations on Compensation. Except as otherwise provided in paragraph 4.1 hereof, neither Contractor nor any Group Physician shall be entitled to any salary or other compensation from Authority or KMC, or to any employee benefits provided by KMC, including disability, life insurance, pension and annuity benefits, educational allowances, professional membership dues, and sick, holiday or vacation pay. Neither Authority nor KMC will withhold income taxes or pay Social Security or unemployment taxes for Contractor or any Group

Physician, all such being the exclusive responsibility of Contractor and Group Physicians, which Contractor and Group Physicians agree to discharge fully.

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 Billing and Collection.

4.5.1 Group Billing and Charges. Contractor shall be solely responsible for the processing, billing and collection of all charges to patients and third-party payers separately from KMC for the amount of the professional (i.e., "physician services") component of the services provided by Contractor hereunder at the Stockdale Location. Contractor expressly agrees as follows:

1) Schedule of Charges. Contractor shall submit at least annually to KMC the current schedule of charges for services provided by Contractor at the Stockdale Location and shall notify KMC of any changes in that charge schedule.

2) Prevailing Charges. Contractor shall be responsible for establishing the schedule of charges for the professional component of the services provided by Contractor at the Stockdale Location. The professional charges to patients for services provided by Contractor at the Stockdale Location shall be competitive with the prevailing charges in the medical community for similar services.

3) Hospital Charges. KMC shall establish the amounts to be charged to patients for the "hospital services" component of the services rendered at the Stockdale Location and shall bill patients and third-party payers separately from Contractor for the amount of the hospital services component of services rendered.

4) Billing Generally. Each party, at its own cost, shall be responsible for processing, billing and collecting from patients or third-party payers for services rendered at the Stockdale Location. In the conduct of its billing and collection practices and procedures, each party agrees that it will not, nor will it permit its employees or agents to, engage in any action that would violate federal, state or local law, including fair debt collection practices, reimbursement and state and federal anti-fraud and abuse laws.

5) Billing Compliance. Contractor shall comply, and shall ensure that Group Physicians comply, with all applicable laws in connection with billing and coding for professional services provided by Contractor or Group Physicians pursuant to this Agreement. Contractor shall adopt and maintain billing and coding compliance policies and procedures to ensure Contractor's compliance with applicable state and federal laws. KMC shall have reasonable access to Contractor's billing records in order to assure Contractor's compliance with this Agreement. Contractor shall promptly correct any billing errors documented by KMC.

4.5.2 Reconciliation. It is the intention of the parties that Authority be compensated and reimbursed for the allocated costs of the services and facilities provided by KMC to Contractor pursuant to this Agreement. Accordingly, on a monthly basis KMC shall review Contractor's records to reconcile the amounts collected by Contractor for professional services rendered by Contractor and Group Physicians at the Stockdale Location. The parties agree that a reasonable allocated cost of the services and facilities provided by KMC for the benefit of Contractor and Group Physicians pursuant to this Agreement is 20% of collected professional fees (the "Monthly Fee"). The Monthly Fee shall be paid by Contractor to KMC within 30 days following completion of each monthly reconciliation.

4.5.3 Copayment Collection Services.

1) Appointment of KMC as Collection Agent. Contractor acknowledges and agrees that KMC shall serve as its agent solely for the purpose of collecting copayments from patients for the professional component of services provided by Contractor and Group Physicians pursuant to this Agreement ("Copayments"). Contractor shall retain all legal right and claim to, and interest in, the Copayments. Contractor acknowledges and agrees that such appointment in no way guarantees collection or payment of the Copayments or otherwise imposes on Authority or KMC any obligation to pay Contractor for Copayments.

2) Scope of Copayment Collection Services. As collection agent for Contractor, KMC shall: (a) collect Copayments by cash, check, or credit card; (b) submit collected Copayments to Contractor's billing service; and (c) employ or contract with and train personnel to carry out any of the tasks described herein (collectively, the "Copayment Collection Services"). KMC shall provide Copayment Collection Services in accordance with its policies and procedures. Contractor shall coordinate and assist KMC as necessary for KMC's performance of the Copayment Collection Services.

3) Indemnification. Contractor shall indemnify and hold harmless Authority and KMC, and their respective directors, officers, employees, or agents, from and against any and all claims, causes of action, liabilities, losses, damages, penalties, assessments, judgments, awards, or costs, including reasonable attorneys' fees and costs (including the reasonable costs of Authority's in-house

counsel), arising out of, resulting from, or relating to the provision of Copayment Collection Services.

4.5.4 Access to Records. The parties agree to permit each other's accountants and other appropriate representatives to have reasonable access during normal working hours to billing, patient, and reimbursement records relating to the professional services rendered by Contractor and Group Physicians at the Stockdale Location for purposes of, and to the extent necessary to perform, billing, collection and accounting function. Upon reasonable request, a party shall provide to the other appropriate billing information, including patient name and address, guarantor name and address, and insurance or other third-party payer information to assist the requesting party in billing and collection efforts.

4.6 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 to KMC patients at KMC (excluding the Stockdale Location) during the term of this Agreement. All such professional fees generated by Contractor 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 and whether received during the term of this Agreement or anytime thereafter. Contractor hereby assigns 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.

4.7 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 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 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 **Patient Information.** Contractor agrees not disclose, and will ensure that Group Physicians 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 will comply, and will ensure that Group Physicians will comply, with all federal and state laws and regulations, all rules, regulations and policies of KMC and its Medical Staff, 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. By signing and/or acknowledging 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”) and agree to comply with and execute the Business Associate Agreement set forth in Exhibit “C,” attached hereto and incorporated herein by this reference.

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 Commencement 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 to Contractor:

Desert Hand and Plastic Surgery PC
38600 Lobelia Circle
Palm Desert, California 92211
Attn.: Its President

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 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 will 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 30 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 30 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.

36.2 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon 120 days' prior written notice to the other party.

36.3 **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) 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; (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; or (vii) the failure of Contractor to cure a default within the time allowed in paragraph 36.1.

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.

DESERT HAND AND PLASTIC SURGERY PC

By _____
David T. Bowen, M.D.
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Bowen.030821

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: \$300,000 per person for bodily injury; \$300,000 per incident for bodily injury; \$100,000 per incident 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. Waiver of Subrogation: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.

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.

[Intentionally left blank]

**EXHIBIT “C”
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority, a local unit of government, on behalf of Kern Medical Center (“**Covered Entity**”), and Desert Hand and Plastic Surgery PC, a California professional medical corporation (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of April 9, 2021 (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 twenty-four (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 fifteen (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 fifteen (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 thirty (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, limits 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 ten (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 thirty (30) calendar days written notice to Business Associate; or

4.3.2 Upon thirty (30) calendar day 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; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Desert Hand and Plastic Surgery PC
38600 Lobelia Circle
Palm Desert, CA 92211
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 of Kern County, 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.

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:

Desert Hand and Plastic Surgery PC

Title: Chairman, Board of Governors

Date: _____

Title: Its President

Date: _____



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

March 17, 2021

Subject: Proposed Agreement with Ralph Garcia-Pacheco Suarez, M.D., a contract employee, for professional medical services in the Department of Medicine

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical recommends your Board approve an agreement with Ralph Garcia-Pacheco Suarez, M.D., a contract employee, for professional medical services in the Department of Medicine. Dr. Garcia-Pacheco is board certified by the American Boards of Pulmonary Medicine, Critical Care Medicine and Internal Medicine and has been employed full-time by Kern Medical since 2015. Dr. Garcia-Pacheco serves as the Chief, Division of Pulmonary Disease and Critical Care Medicine, Director, Intensive Care Unit and also serves as the Specialty Education Coordinator for the Department residency training and medical student programs.

Dr. Garcia-Pacheco's annual salary is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents the reasonable fair market value compensation for the services provided. Dr. Garcia-Pacheco's annual compensation is comprised of: (i) a base salary for teaching and administrative duties in the amount of \$30,000 per year; (ii) payment for care of Kern Medical patients; (iii) hospitalist shift coverage; and, (iv) after-hours clinic coverage. Dr. Garcia-Pacheco will continue to receive the same complement of benefits, including eligibility to participate in the physicians' pension plan, health care coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the agreement with Dr. Garcia-Pacheco for professional medical services in the Department of Medicine from June 1, 2021 through May 31, 2024, in an amount not to exceed \$1,560,000, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Ralph Garcia-Pacheco Suarez, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Ralph Garcia-Pacheco Suarez, M.D. (“Physician”).

**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 requires the assistance of Physician to provide professional medical and administrative services in the Department of Medicine at KMC (the “Department”), as such services are unavailable from Authority resources, and Physician desires to accept employment on the terms and conditions set forth in this Agreement; and

(c) Physician has special training, knowledge and experience to provide such services; and

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical and administrative services in the Department (Agt. #13818, dated June 1, 2018), for the period June 1, 2018 through May 31, 2021; and

(e) Each party expressly understands and agrees that Agt. #13818 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 (“Term”) shall be for a period of three (3) years, commencing as of June 1, 2021 (the “Commencement Date”), and shall end May 31, 2024 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

2. **Employment.** Authority hereby employs Physician as Chief, Division of Pulmonary Disease and Critical Care Medicine and for the practice of medicine in the care and treatment of patients at KMC, or at such other clinic sites as KMC may designate (collectively referred to as the “Practice Sites”). It is expressly understood and agreed that KMC shall have reasonable discretion to consolidate and relocate clinics operated by Authority and to re-designate Practice Sites served by Physician from time to time. Physician shall be subject to Authority’s employment policies, directives, rules and regulations as promulgated by Authority from time to time, including, but not limited to, those pertaining to employees.

3. **Representations and Warranties.** Physician represents and warrants to Authority and KMC, upon execution and throughout the Term of this Agreement, as follows: (i) Physician is not bound by any agreement or arrangement which would preclude Physician from entering into, or from fully performing the services required under this Agreement; (ii) Physician’s license to practice medicine in the state of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to the terms of probation or other restriction; (iii) Physician’s medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction; (iv) Physician holds a valid Controlled Substance Registration Certificate issued by the Drug Enforcement Administration that has never been revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (v) Physician is not currently and has never been an Ineligible Person¹; (vi) Physician is not currently the subject of a disciplinary or other proceeding or action before any governmental, professional, medical staff or peer review body; and (vii) Physician has, and shall maintain throughout the term of this Agreement, an unrestricted license to practice medicine in the state of California and staff membership and privileges at KMC.

4. **Obligations of Physician.**

4.1 **Services.** Physician shall engage in the practice of medicine on a full-time basis exclusively as an exempt employee of Authority. Physician shall render those services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference.

4.2 **Use of Premises.** Physician shall use the Practice Sites as designated by Authority or KMC exclusively for the practice of medicine in the care and treatment of patients and shall comply with all applicable federal, state, and local laws, rules and regulations related thereto.

4.3 **Qualifications.**

4.3.1 **Licensure.** Physician shall maintain a current valid license to practice medicine in the state of California at all times during the Term of this Agreement.

¹ An “Ineligible Person” is an individual or entity who: (i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the federal health care programs or in federal procurement or non-procurement programs; or (ii) has been convicted of a criminal offense that falls within the range of activities described in 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

4.3.2 Board Certification. Physician shall be board certified by the American Board of Internal Medicine in critical care medicine-subspecialty and pulmonary disease-subspecialty, and maintain such certifications at all times during the Term of this Agreement.

4.3.3 Medical Staff Status. Physician shall at all times during the Term of this Agreement be a member in good standing of the KMC medical staff with “active” staff status and hold all clinical privileges on the active medical staff appropriate to the discharge of his obligations under this Agreement.

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

4.4 Loss or Limitation. Physician shall notify KMC in writing as soon as possible (but in any event within three (3) business days) after any of the following events occur: (i) Physician’s license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (ii) Physician’s medical staff privileges at KMC or any other health care facility are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (iii) Physician’s Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (iv) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (v) Physician becomes the subject of a disciplinary or other proceeding or action before any governmental, professional, medical staff or peer review body; or (vi) an event occurs that substantially interrupts all or a portion of Physician’s professional practice or that materially adversely affects Physician’s ability to perform Physician’s obligations hereunder.

4.5 Standards of Medical Practice. The standards of medical practice and professional duties of Physician at designated Practice Sites shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for physicians 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.

4.6 Managed Care Contracting. Physician shall 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 KMC to participate in any third-party payer arrangements, Physician shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a “Managed Care Organization”) designated by 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.

4.7 Authorization to Release Information. Physician hereby authorizes Managed Care Organizations, government programs, hospitals and other third parties to release to KMC and its agents any information requested by KMC or its agents from time to time relating to Physician's professional qualifications or competency. Physician agrees to execute the Authorization to Release Information in the form set forth in Exhibit "B," attached hereto and incorporated herein by this reference, and to execute all other documents required by KMC from time to time and to otherwise fully cooperate with KMC to enable KMC and its agents to obtain such information from third parties.

4.8 Medical Records. Physician shall cause a complete medical record to be timely prepared and maintained for each patient seen by Physician. 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 Physician shall 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. All patient medical records of Practice Sites, including without limitation, patient medical records generated during the Term of this Agreement, shall be the property of KMC subject to the rights of the respective patients. Upon the expiration or termination of this Agreement by either party for any reason, KMC shall retain custody and control of such patient medical records.

4.9 Physician Private Practice. Physician understands and agrees that he shall not enter into any other physician employment contract or otherwise engage in the private practice of medicine or provide similar services to other organizations, directly or indirectly, during the Term of this Agreement or any extensions thereof.

4.10 Proprietary Information. Physician acknowledges that during the Term of this Agreement Physician will have contacts with and develop and service KMC patients and referring sources of business of KMC. In all of Physician's activities, Physician, through the nature of his work, will have access to and will acquire confidential information related to the business and operations of KMC, including, without limiting the generality of the foregoing, patient lists and confidential information relating to processes, plans, methods of doing business and special needs of referring doctors and patients. Physician acknowledges that all such information is solely the property of KMC and constitutes proprietary and confidential information of KMC; and the disclosure thereof would cause substantial loss to the goodwill of KMC; and that disclosure to Physician is being made only because of the position of trust and confidence that Physician will occupy. Physician covenants that, except as required by law, Physician will not, at any time during the Term or any time thereafter, disclose to any person, hospital, firm, partnership, entity or organization (except when authorized in writing by KMC) any information whatsoever pertaining to the business or operations of KMC, any affiliate

thereof or of any other physician employed by KMC, including without limitation, any of the kinds of information described in this paragraph.

4.11 Physician Covenants. Physician covenants that from the Commencement Date and continuing throughout the Term of this Agreement, Physician, unless otherwise permitted by the written consent of Authority shall not, on Physician's own account or as an employee, landlord, lender, trustee, associate, consultant, partner, agent, principal, contractor, owner, officer, director, investor, member or stockholder of any other person, or in any other capacity, directly or indirectly, in whole or in part: (i) engage in any activities that are in competition with KMC, including the operation of any medical practice or offering of any medical services that are similar to services offered at the Practice Sites; (ii) solicit or encourage the resignation of any employee of Authority or KMC with whom Physician had a working relationship during Physician's employment with Authority; (iii) solicit or divert patients with whom Physician had personal contact during such employment; or (iv) influence or attempt to influence any payer, provider or other person or entity to cease, reduce or alter any business relationship with Authority or KMC relating to the Practice Sites.

5. Compensation Package.

5.1 Annual Compensation. Physician shall work full time, which is a minimum of 80 hours per biweekly pay period, and will be compensated with cash and other value as described below in this paragraph 5.1 ("Annual Salary").

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$18,846.15 biweekly not to exceed \$490,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services in the amount of \$30,000 per year and (ii) payment for care of KMC patients in the amount of \$460,000 per year. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

5.1.2 Biweekly Payment. Physician shall be paid biweekly on the same schedule as regular Authority employees. The exact date of said biweekly payments shall be at the sole discretion of Authority. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.1.3 Fair Market Value Compensation. The compensation provided under section 5.1 represents the parties' good faith determination of the reasonable fair market value compensation for the services to be provided by Physician under this Agreement.

5.2 Hospitalist Shift Coverage. Authority shall pay Physician for hospitalist shift coverage as follows: (i) Authority shall pay Physician a fixed fee in the amount \$1,488 for each daytime, 12-hour shift, 7:00 a.m.-7:00 p.m. (weekends only); and (ii) Authority shall pay

Physician a fixed fee in the amount of \$1,680 for each nighttime, 12-hour shift, 7:00 p.m.-7:00 a.m. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.3 After-hours Clinic Coverage. Authority shall pay Physician an hourly rate of \$150 per hour, less all applicable federal and state taxes and withholdings, for after-hours clinic coverage (defined as scheduled appointments in the KMC outpatient clinics on weekends or after 5:00 p.m. on weekdays).

5.4 Professional Fee Billing.

5.4.1 Assignment. KMC shall have the exclusive right and authority to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Physician at the Practice sites during the Term of this Agreement. All professional fees generated by Physician for services rendered at the Practice Sites during the Term of this Agreement, including without limitation, both cash collections and accounts receivable, capitated risk pool fees, professional retainer fees, honoraria, professional consulting and teaching fees, and fees for expert testimony (but excluding Physician's private investment and nonprofessional income), will be the sole and exclusive property of KMC, whether received by KMC or by Physician and whether received during the Term of this Agreement or anytime thereafter. Physician hereby assigns 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.

5.4.2 Remittance of Professional Fee Charges. Physician shall remit all professional fee charges to KMC within 45 days of the date direct patient care services are provided by Physician. Any professional fee charges not remitted by Physician to KMC within 45 days of the date of such service, or any charges for which relevant documentation has not been provided, will not be credited to Physician as Worked RVU.

5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,560,000 over the three-year Term of this Agreement.

6. Benefits Package.

6.1 Retirement. Physician shall continue to participate in the Kern County Hospital Authority Defined Contribution Plan for Physician Employees (the "Plan"), a qualified defined contribution pension plan, pursuant to the terms of the instrument under which the Plan has been established, as from time to time amended. Physician is not eligible to participate in any other retirement plan established by Authority for its employees, including but not limited to the Kern County Employees' Retirement Association, and this Agreement does not confer upon Physician any right to claim entitlement to benefits under any such retirement plan(s).

6.2 Health Care Coverage. Physician shall continue to receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees.

The employee share of cost is 20% of the current biweekly premium. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least 40 hours per biweekly pay period to be eligible for coverage.

6.3 Holidays. Physician shall be entitled to paid holidays subject to Authority policy, as amended from time to time. Physician will not be paid for banked holidays upon termination of employment.

6.4 Vacation. Physician shall retain his vacation leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be entitled to vacation leave subject to Authority policy, as amended from time to time. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician's current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate). All payments made by Authority to Physician under this paragraph will be subject to all applicable federal and state taxes and withholding requirements.

6.5 Sick Leave. Physician shall retain his sick leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be entitled to sick leave subject to Authority policy, as amended from time to time. Physician will not be paid for accrued and unused sick leave upon termination of employment.

6.6 Education Leave. Physician shall receive 80 hours paid education leave annually. The first 80 hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional 80 hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The Chief Medical Officer must approve education leave in advance of use. Physician's participation in educational programs, services or other approved activities set forth herein shall be subordinate to Physician's obligations and duties under this Agreement.

6.7 CME Expense Reimbursement. Authority shall reimburse Physician for all approved reasonable and necessary expenditures related to continuing medical education in an amount not to exceed \$2,500 per Employment Year, payable in arrears, in accordance with Authority policy, as amended from time to time. This amount may not be accumulated or accrued and does not continue to the following Employment Year.

6.8 Flexible Spending Plan. Physician shall be eligible to participate in flexible spending plans to pay for dependent care, non-reimbursed medical expenses, and certain insurance premiums on a pre-tax basis through payroll deduction. This is a voluntary benefit that is paid by Physician if he elects to participate in the plan.

6.9 Attendance at Meetings. Physician shall be permitted to be absent from KMC during normal working days to attend professional meetings and to attend to such outside professional duties in the healthcare field as may be mutually agreed upon between Physician and the Chief Medical Officer. Attendance at such approved meetings and accomplishment of approved professional duties shall be fully compensated service time and will not be considered vacation or education leave.

6.10 Unpaid Leave of Absence. Physician may take an unpaid leave of absence in accordance with Authority policies in effect at the time the leave is taken.

6.11 Social Security. Physician is exempt from payment of Social Security taxes as the Kern County Hospital Authority Pension Plan for Physician Employees is a qualified alternative to the insurance system established by the federal Social Security Act.

6.12 Deferred Compensation. Physician shall be eligible to participate in the Kern County Deferred Compensation Plan ("457 Plan") on a pre-tax basis. Physician shall make all contributions if he elects to participate in the 457 Plan.

6.13 Disability Insurance. Physician shall be eligible to purchase Long Term Disability or Short Term Disability insurance coverage through payroll deduction on a post-tax basis. This is a voluntary benefit that is paid by Physician if he elects to participate in the plan.

6.14 Employee Assistance/Wellness Programs. Physician shall be eligible to participate in any Authority-sponsored employee assistance and employee wellness programs.

6.15 Limitation on Benefits. Except as expressly stated herein, Physician shall receive no other benefits from Authority.

7. Assignment. Physician shall not assign or transfer this Agreement or his obligations hereunder or any part thereof. Physician shall not assign any money due or which becomes due to Physician under this Agreement without the prior written approval of Authority.

8. Assistance in Litigation. Upon request, Physician shall support and assist Authority as a consultant or expert witness in litigation to which Authority is a party.

9. Authority to Incur Financial Obligation. It is understood that Physician, in his 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 and Interpretation. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

11. Choice of Law/Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the state of California, with venue of any action relating to this Agreement in the County of Kern, state of California.

12. Compliance with Law. Physician 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.

13. **Confidentiality.** Physician shall maintain confidentiality with respect to information that he receives in the course of his employment and not use or permit the use of or disclose any such information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.

14. **Conflict of Interest.** Physician covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of his services hereunder. 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.

15. **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.

16. **Dispute Resolution.** In the event of any dispute involving the enforcement or interpretation of this Agreement or any of the rights or obligations arising hereunder, the parties shall first attempt to resolve their differences by mediation before a mediator of their mutual selection. If the parties are, after mutual good faith efforts, unable to resolve their differences by mediation, 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. All costs of any dispute resolution procedure shall be borne equally by the parties.

17. **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.

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician 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 designated KMC Practice Sites 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 Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

19. **Invalidity of a Portion.** Should a portion, section, paragraph, or term of this Agreement be construed as invalid by a court of competent jurisdiction, or a competent state or federal agency, the balance of the Agreement shall remain in full force and effect. Further, to the extent any term or portion of this Agreement is found invalid, void or inoperative, the parties agree that a court may construe the Agreement in such a manner as will carry into force and effect the intent appearing herein.

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

21. **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 Physician, 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. Physician shall be given 30 days' prior written notice in the event that Authority requires such an action.

22. **Nondiscrimination.** No party to this Agreement shall discriminate on the basis of race, color, religion, sex, national origin, age, marital status or sexual orientation, ancestry, physical or mental disability, medical conditions, political affiliation, veteran's status, citizenship or marital or domestic partnership status or on the basis of a perception that an individual is associated with a person who has, or is perceived to have, any of these characteristics.

23. **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 Physician. 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.

24. **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 Physician:

Ralph Garcia-Pacheco Suarez, M.D.
10300 Revere Beach Drive
Bakersfield, California 93314

Notice to Authority:

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

25. **Relationship.** Authority and Physician recognize that Physician is rendering specialized, professional services. The parties recognize that each is possessed of legal knowledge and skill, and that this Agreement is fully understood by the parties, and is the result of bargaining between

the parties. Each party acknowledges their opportunity to fully and independently review and consider this Agreement and affirm complete understanding of the effect and operation of its terms prior to entering into the same.

26. **Severability.** Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the state of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

27. **Sole Agreement.** This Agreement 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.

28. **Termination.**

28.1 **Termination without Cause.** Either party shall have the right to terminate this Agreement, without penalty or cause, by giving not less than 90 days' prior written notice to the other party.

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC, which conduct persists for five (5) business days after written notice to Physician; (xii) Physician breaches the confidentiality provisions of this

Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment, which failure persists for five (5) business days after written notice to Physician; or (xv) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

29.1 **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 Physician after the effective date of the termination, and Physician shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

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

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

30. **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.

PHYSICIAN

By _____
Ralph Garcia-Pacheco Suarez, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

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”
JOB DESCRIPTION
Ralph Garcia-Pacheco Suarez, M.D.

Position Summary: Reports to the Chair, Department of Medicine; serves as Chief, Division of Pulmonary Disease and Critical Care Medicine; serves as Director, Intensive Care Unit; serves as Director, Pulmonary Ambulatory Care; serves as the Specialty Education Coordinator for the Department residency training and medical student programs.

Clinical Responsibilities:

- Supervises residents while on service
- Provides mutually agreed upon coverage in the intensive care and direct observation units
- Coordinates mutually agreed upon weekday professional staffing of the intensive care unit
- Provides mutually agreed upon weekday and weekend after hours call coverage
- Supervises procedures performed by residents and mid-levels while on service
- Performs therapeutic and diagnostic procedures with the scope of practice for a pulmonary disease and critical care specialist while on service
- Provides mutually agreed upon outpatient clinic services related to pulmonary disease and critical care medicine

Medical Education; Academic Responsibilities:

- Provides clinical mentoring to and evaluation of residents and medical students
- Establishes and maintains academic appointment at David Geffen School of Medicine at University of California, Los Angeles

Teaching:

- Coordinates and ensures the pulmonary disease and critical care medicine service provides a daily one-hour didactic lecture while on service
- Participates in the daily one hour pulmonary disease and critical care medicine didactic lecture while on service
- Provides afternoon pulmonary disease and critical care medicine related lectures (minimum of six per year) while on service
- Coordinates faculty participation in pulmonary disease and critical care medicine afternoon lectures
- Serves as Director and faculty of the FCCS course
- Teaches the ACLS course twice annually
- Organizes and schedules the monthly pulmonary disease and critical care medicine grand rounds

Administrative Responsibilities:

- Serves as Chair of the Joint ICU Committee and Code Blue Subcommittee
- Oversees all matters related to the intensive care and direct observation units, including without limitation, development of policies and procedures, quality improvement, and oversight of medical care

- Participates in development of Department curriculum
- Participates in recruitment of Department professional staff

Hospitalist Shift Coverage:

- Reports to the Chief, Division of Hospitalist Services
- Provides mutually agreed upon inpatient hospitalist shift coverage with scheduled shifts consisting of 12-hours shifts, 7:00 a.m.-7:00 p.m. and 7:00 p.m.-7:00 a.m.
- Remains in-house during each assigned 12-hour shift (a hospitalist call room shall be provided)
- Supports the hospitalist service in caring for patients admitted to a resident team or to the faculty hospitalist service
- Supervises residents and medical students while on service
- Manages patients through the continuum of hospital care including seeing patients in the emergency department, following patients through the inpatient units, and organizing post-acute care
- Serves as an intermediary in adjudicating venue of care decisions or coordination of care between the emergency medicine physicians and other medical staff
- Prescribes medications or treatment regimens to inpatients in accordance with Hospital Formulary standards
- Orders or interprets the results of diagnostic tests such as laboratory findings and imaging studies
- Provides inpatient consultations

After-hours Clinic Coverage:

- Provides after-hours clinic coverage scheduled appointments in the KMC outpatient clinics on weekends or after 5:00 p.m. on weekdays as mutually agreed upon

Committee Assignments:

- Attends Department staff meetings and the annual Medical Staff meeting
- Participates in medical staff committee meetings assigned by the President of the Medical Staff

Employment Standards:

Three years post-residency fellowship training in pulmonary and critical care medicine

AND

Possession of a current valid Physician's and Surgeon's Certificate issued by the state of California

AND

Certification by the American Board of Internal Medicine in critical care medicine-subspecialty AND pulmonary disease-subspecialty

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to pulmonary disease and critical care medicine; principles of effective supervision and program development.

[Intentionally left blank]

EXHIBIT "B"
AUTHORIZATION TO RELEASE INFORMATION

[See attached]

AUTHORIZATION TO RELEASE INFORMATION

I, the undersigned physician, hereby authorize Kern Medical Center (“KMC”) and its duly authorized representatives to obtain information from time to time about my professional education, training, licensure, credentials competence, ethics and character from any source having such information. This information may include, without limitation, peer review information, DRG and RVU analyses, ancillary usage information and other utilization and quality related data.

I hereby release the Kern County Hospital Authority and KMC, its authorized representatives and any third parties from any liability for actions, recommendations, statements, reports, records or disclosures, including privileged and confidential information, involving me that are made, requested, taken or received by KMC or its authorized representatives to, from or by any third parties in good faith and relating to or arising from my professional conduct, character and capabilities.

I agree that this authorization to release information shall remain effective until termination of my employment by the Kern County Hospital Authority and KMC. A duplicate of this authorization may be relied upon to the same degree as the original by any third party providing information pursuant to this request.

Physician

Date

EXHIBIT "C"
TIME LOG FORM

[See attached]

TIME LOG FORM

Physician Name

Signature / Date

Department

Month / Year of Service

Total Hours / Month

Services Provided (please list specific activity performed)

Date

Hours

1. Medical Staff CME Activities

2. Hospital Staff Education and Training

3. Clinical Supervision

4. Quality Improvement Activities (committees, case review, etc.)

5. Administration Activities

6. Community Education

7. Medical Management Activities

8. Compliance Activities

9. Other Services



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

March 17, 2021

Subject: Proposed Amendment No. 4 to the Engineering/Architectural Services Agreement with KSA Group Architects, LLP

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 4 to the Engineering/Architectural Services Agreement with KSA Group Architects, LLP, the licensed Architect of Record, for the Pediatric/Postpartum Relocation project on 4th floor C and D Wings located at Kern Medical.

This Amendment No. 4, effective March 18, 2021, will extend the term from June 30, 2021 to June 30, 2024 and increase the maximum payable by \$100,000, from \$700,000 to \$800,000. KSA Group Architects, LLP is the stamped Architect of Record on the OSHPD approved drawings and Building Permit for the Pediatric/Postpartum Relocation project. This project is being completed in four (IV) Phases. Phase I is complete; Phase II cannot be completed before the current term of June 30, 2021, and Phases III and IV will follow, necessitating the need to extend the term of the Agreement. The increase in the maximum payable will allow Kern Medical to compensate the Architect of Record for the additional Phases.

Agreement/ Amendment	Payment for Services	Previous Year Agreement	Proposed Agreement	Variance
Engineering/Architectural Services Agreement July 1, 2016 – June 30, 2019	Architect of Record – Design Services	\$250,000		
Amendment No. 1 July 1, 2016 – June 30, 2019	Architect of Record Design Services	\$450,000		
Amendment No. 2 July 1, 2016 – June 30, 2019	OSHPD Architect of Record - Construction Admin	\$700,000		
Amendment No. 3 July 1, 2019 – June 30, 2021	N/A	N/A		
Amendment No. 4 July 1, 2021 – June 30, 2024	OSHPD Architect of Record – Construction	\$700,000	\$800,000	\$100,000

Therefore, it is recommended that your Board approve Amendment No. 4 to the Engineering/Architectural Services Agreement with KSA Group Architects, LLP for the period of July 1, 2016 through June 30, 2024, increasing the maximum payable by \$100,000, from \$700,000 to \$800,000, to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 4
TO
ENGINEERING/ARCHITECTURAL SERVICES AGREEMENT
(Kern County Hospital Authority – KSA Group Architects, LLP)**

THIS AMENDMENT TO AGREEMENT, effective March 17, 2021, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and KSA Group Architects, LLP ("Consultant") with its principal place of business located at 4660 America Avenue, Suite 200, Bakersfield California 93309.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Engineering/Architectural Services Agreement (KCHA Agt. #07616, dated July 1, 2016), Amendment No. 1 (KCHA Agt. #2016-082, dated November 16, 2016), Amendment No 2. (KCHA Agt. #069-2017, dated October 18, 2017), and Amendment No. 3 (KCHA Agt. #14619, dated April 22, 2019) ("Agreement"), for the period of July 1, 2016 through June 30, 2021; and

WHEREAS, the parties to the Agreement desire to amend the Agreement as specified herein below;

NOW, THEREFORE, KCHA and Consultant do mutually agree as follows (check those applicable):

- Term.** The Agreement shall be extended from June 30, 2021 to June 30, 2024, unless sooner terminated as provided for in the Agreement.
- Fees** payable by KCHA under the Agreement shall increase by 100,000, from 700,000 to 800,000.
- Travel Expenses** payable by KCHA under the Agreement shall increase from by XXXX, from XXXX to XXXX.
- Services.** See Exhibits XX and XX, attached hereto and incorporated herein by this reference, for revised Services.
- Other**

Except as expressly amended herein, all provisions of the Agreement, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment No. 4 to the Agreement has been executed as of the date indicated above.

KERN COUNTY HOSPITAL AUTHORITY

APPROVED AS TO CONTENT:

By _____
Russell Bigler, Chairman, Board of Governors
"KCHA"

By _____
Russell V. Judd, Chief Executive Officer

Date: _____

Date: _____

KSA Group Architects

APPROVED AS TO FORM:

Legal Services Department

By  _____
Name/Position Derek Holdsworth AIA, President
"Consultant"

By  _____
Hospital Counsel

Date: 2/16/21

Date: 2/16/2021



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

March 17, 2021

Subject: Proposed retroactive Amendment No. 7 to Agreement 472-2009 with Morrison Management Specialists, Inc., dba Morrison Health Care, Inc. (“Morrison”) for dietary and nutrition services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting your Board retroactively approve the proposed Amendment No. 7 to the Agreement with Morrison for the provision of management services of the food and nutrition department to increase the maximum payable to account for food, paper products, sanitation supplies and other direct expenses and to allow Morrison to manage cash and credit transactions for retail sales.

Historically, the Agreement has included a maximum payable to provide for the payment of management fees and payroll and incentive dollars associated with the Agreement. The Agreement also provides that Morrison will purchase food, paper products, sanitation supplies, and other items and pass through those expenses to Kern Medical, although no provision was made for these expenditures in the maximum payable.

The current term of the Agreement covers the period June 27, 2018 through June 26, 2023. The Amendment provides for an increase in the current maximum payable of \$6,798,536 by \$7,776,693 over the term of the Agreement for the purchase of food, paper products, sanitation supplies and other direct expenses, for a total maximum payable of \$14,575,299, effective December 1, 2020. This increase is reflective of historical purchases to date and projecting historical averages through the remainder of the term.

Year	10	(June 27, 2018 through June 26, 2019)	\$1,728,291
Year	11	(June 27, 2019 through June 26, 2020)	\$1,780,495
Year	12	(June 27, 2020 through June 26, 2021) (PROJECTED)	\$1,812,220
Year	13	(June 27, 2021 through June 26, 2022) (PROJECTED)	\$1,866,587
Year	14	(June 27, 2022 through June 26, 2023) (PROJECTED)	\$1,922,584
Total Direct Contract Expenses (Years 10 -14)			\$9,110,177

This total increase has been reduced by the anticipated cash and credit sales in our retail food areas. Total revenues are estimated based on historical averages and do not include amounts paid through payroll deduction or other intra-hospital transactions like hospital catering, that do not flow through Morrison.

Cafeteria sales from Cash and Credit ONLY		Total Revenue
Year 12	(March 1, 2021 through June 26, 2021)	\$188,879
Year 13	(June 27, 2021 through June 26, 2022)	\$566,637
Year 14	(June 27, 2022 through June 26, 2023)	\$577,969
Total Cafeteria Sales Revenue		<u><u>\$1,333,485</u></u>
Net Cost of Contract for Food, Paper Products, Sanitation and other Direct Expenses For Years 10 through 14		<u><u>\$7,776,693</u></u>

Food and paper product purchases supply our retail food areas, catering and patient meals throughout the hospital. Reimbursement for patient meals is accounted for in the reimbursement rates for patient services. Retail food areas allow for purchases with cash, credit/debit or through payroll deduction or declining balance through an employee badge and are tracked and managed to ensure that increases in food purchases correspond with increases in retail and catering sales.

Under our current Agreement, Morrison has responsibility for purchasing of food, paper products and sanitation products and can do so through Morrison’s purchasing arrangements or through Kern Medical’s GPO. Purchasing is currently executed through Morrison’s purchasing arrangements and Morrison shares a portion of the sales rebates they receive in the form of capital investments. Staff has reviewed alternative purchasing options and will continue to purchase through Morrison’s arrangements at this time due to its operational and financial advantages.

Therefore, it is recommended that your Board retroactively approve Amendment No. 7 to the Agreement with Morrison, increasing the maximum payable for the period June 27, 2018 through June 26, 2023 by \$7,776,693, from \$6,798,536 to \$14,575,299, effective December 1, 2020, and authorize the Chairman to sign.

**AMENDMENT NO. 7 TO
MANAGED SERVICES AGREEMENT
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Morrison Management Specialists, Inc.)**

This Amendment No. 7 to the Managed Services Agreement is made and entered into this 17th day of March, 2021, by and between the Kern County Hospital Authority, a local unit of government (“KCHA”), which owns and operates Kern Medical Center (“Kern Medical”), and Morrison Management Specialists, Inc., a Georgia corporation, d/b/a Morrison Health Care, Inc. (“Morrison”), with offices located at 400 Northridge Road, Suite 600, Atlanta, Georgia 30350.

RECITALS

(a) The County of Kern and Morrison have heretofore entered into a Managed Services Agreement (Kern County Agt. #472-2009, dated June 16, 2009), Amendment No. 1 (Kern County Agt. #1104-2010, dated December 13, 2010), Amendment No. 2 (Kern County Agt. #836-2012, dated November 12, 2012), Amendment No. 3 (Kern County Agt. #479-2013, dated June 25, 2013), Amendment No. 4 (Kern County Agt. #450-2015, dated June 23, 2015), Assignment of Agreement (Kern County Agt.#297-2016, dated March 1, 2016), Amendment No. 5 (HA Agt. #078-2017, dated November 15, 2017), and Amendment No. 6 (HA Agt. #025-2020) (hereinafter collectively referred to as the “Agreement”), for the period June 27, 2009 through June 30, 2023, to provide supervision and management of the Food Service at Kern Medical; and

(b) The parties have agreed to add management of cash and credit card sales by Morrison and to add the maximum payable for food, paper products, sanitation supplies and other related direct costs.; and

(c) The parties agree to amend the affected terms and conditions of the Agreement as hereinafter set forth; and

(d) This Amendment No. 7 to the Agreement shall be effective December 1, 2020 unless otherwise specified below;

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 to amend the Agreement as follows:

1. Section 11, Restrictive Covenant, Subsection a. will be deleted and replaced with the below:

“In addition, KCHA agrees that Lori Tolleson will collaborate with Morrison leadership on initiatives related to the patient experience but will not be responsible for any management or oversight of Morrison, its performance, the services rendered by Morrison, or this Agreement.”

2. Section 16, Purchase of Food and Related Supplies, shall include the following subsections, which will become effective on March 1, 2021:

h. Retail Operations.

(i) As a part of the Services, Morrison shall operate the retail foodservice area located at the Kern County Hospital Authority Garden Café (“Retail Foodservice Area”).

(ii) Morrison shall provide the initial point of sale system (including both hardware and software) for the Retail Foodservice Area (the “POS System”). Morrison shall use Morrison’s merchant identification number for payment processing.

i. Sales Revenues.

(i) Subject to Paragraph (ii) below and effective March 1, 2021, Morrison shall retain all sales revenues from the Retail Foodservice Area, including all cash sales and sales made by way of credit card, debit card or other forms of electronic payment. Morrison shall provide a monthly credit in arrears on a Morrison invoice for these net sales revenues (with “net sales revenues” referring to gross sales from the Retail Foodservice Area, less applicable sales taxes).

(ii) If Kern Medical maintains a system that allows Kern Medical employees to pay for meals or other items from the Retail Foodservice Area via payroll deduction, Kern Medical shall retain the payroll deduct sales revenues from these purchases; however, Morrison shall charge Kern Medical for the sales tax related to these payroll deduction sales revenues monthly in arrears.

j. Sales Taxes. Morrison shall collect and remit sales taxes on the sales revenues that Morrison retains from the Retail Foodservice Area, except that if Kern Medical fails to timely make a payment to Morrison for gross payroll deduction sales revenues under Paragraph (ii) above, then Kern Medical shall remit sales taxes related to these payroll deduction sales directly to the proper taxing authority.

3. Section 22, Cost of Services, paragraph b, Summary of Costs, shall include the following subsection:

“b. Summary of Costs:

v. For the period of June 27, 2018 through June 26, 2023, Morrison's charges to KCHA for food, paper products, sanitation supplies, and other related direct costs net of credits provided for retail sales revenues provided under Subsection 16(i) above (“Net Charges”) shall not exceed \$7,776,693. If Morrison’s Net Charges

during a contract year exceed 80% of the total Net Charge amount identified in Exhibit C for that contract year, Morrison shall notify KCHA and the parties shall promptly enter into an Amendment to this Agreement to increase the total Net Charge amount by a mutually agreed upon amount, pending approval by the KCHA Board of Governors. If the parties are unable to mutually agree upon such an Amendment and Morrison's actual Net Charges for the contract year exceed that contract year's total Net Charge amount (as identified in Exhibit C), Morrison may terminate this Agreement immediately upon written notice to KCHA."

4. Exhibit C is deleted in its entirety and replaced with the Exhibit C attached to this Amendment.

5. Exhibit E of the Agreement ("Purchasing Responsibilities") shall be deleted in its entirety and replaced with Exhibit E to this Amendment No. 7 ("Purchasing Responsibilities"), attached hereto and incorporated herein by this reference.

6. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.

7. This Amendment shall be governed by and construed in accordance with the laws of the state of California.

8. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

9. Except as provided herein, all other terms, conditions and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 7 as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY

MORRISON MANAGEMENT
SPECIALISTS, INC.

By _____
Russell Bigler
Chairman, Board of Governors

By  _____
Name: Lisa Trombley
Title: Senior Vice President

Approved As To Content:
Kern Medical Center

By _____
Russell V. Judd
Chief Executive Officer

Approved As To Form:
Legal Services Department


By  _____
Jamie Mason
Hospital Counsel

EXHIBIT C TO AMENDMENT NO. 7
Summary of Costs

Annual Contract Cost Not to Exceed

(Years 10 through 14)

	Total Salaries & Benefits	Total Support Fees	Total Year Price
Year 10 (June 27, 2018 through June 26, 2019)	\$1,027,767	\$ 173,040	\$1,200,807
Year 11 (June 27, 2019 through June 26, 2020)	\$1,048,323	\$ 176,501	\$1,224,824
Year 12 (June 27, 2020 through June 26, 2021)	\$1,192,172	\$ 180,031	\$1,372,203
Year 13 (June 27, 2021 through June 26, 2022)	\$1,216,015	\$ 183,632	\$1,399,647
Year 14 (June 27, 2022 through June 30, 2023)	\$1,240,335	\$ 189,357	\$1,429,692
Total Fixed Contract Price Years 10 through 14 (consisting of Total Salaries & Benefits and Total Support Fees)			<u>\$6,627,173</u>

Incentive Opportunity

Year 10 (June 27, 2018 through June 26, 2019)	\$ 32,784
Year 11 (June 27, 2019 through June 26, 2020)	\$ 33,440
Year 12 (June 27, 2020 through June 26, 2021)	\$ 34,109
Year 13 (June 27, 2021 through June 26, 2022)	\$ 34,791
Year 14 (June 27, 2022 through June 30, 2023)	\$ 35,875
Total Variable Contract Price Years 10 through 14 (consisting of Total Incentive)	<u>\$ 170,999</u>

Net Charges

Total Cost of Food, Paper Products, Sanitation supplies, and other Direct Expenses

Cost projections	Total Cost
Year 10 (June 27, 2018 through June 26, 2019)	\$1,728,291
Year 11 (June 27, 2019 through June 26, 2020)	\$1,780,495
Year 12 (June 27, 2020 through June 26, 2021)	\$1,812,220
Year 13 (June 27, 2021 through June 26, 2022)	\$1,866,587
Year 14 (June 27, 2022 through June 26, 2023)	\$1,922,584
Total Contract Expenses (Years 10 -14)	<u><u>\$9,110,177</u></u>

Cafeteria sales from Cash and Credit			Total Revenue
Year	12	(March 1, 2021 through June 26, 2021)	\$188,879
Year	13	(June 27, 2021 through June 26, 2022)	\$566,637
Year	14	(June 27, 2022 through June 26, 2023)	\$577,969
Total Cafeteria Sales Revenue			<hr/> \$1,333,485
Net Charges			Total Net Charge
Year	12	(March 1, 2021 through June 26, 2021)	\$1,623,341
Year	13	(June 27, 2021 through June 26, 2022)	\$1,299,950
Year	14	(June 27, 2022 through June 26, 2023)	\$1,344,615
Total Net Charge For Years 10 through 14			<hr/> \$7,776,693 <hr/>

Exhibit E

Purchasing Responsibilities

(M = Morrison; H = Hospital). Purchases by Morrison will be billed to Hospital per Section 16d.

	<u>Morrison/Program</u>	<u>Hospital</u>
Food.....	M	
Office supplies/stationery.....	M	
In-service training materials/supplies.....	M	
Telephone service.....		H
Telephone long distance.....		H
Laundry.....	M	
Cleaning/dishwashing supplies.....	M	
Menu paper and print.....	M	
Copying.....	M	
Kitchen paper/plastic.....	M	
Marketing/merchandising materials for operation....	M	
Patient education materials/guides.....	M	
Business licenses and permits..... (other than licenses related to the service of alcohol)	M	
Computer hardware/printer paper.....	M	
Computer software.....	M	
Computer related charges.....	M	
Utilities.....		H
Pest control.....		H
Employee physicals, background checks and testing.....		H
Garbage/trash removal.....		H
Service contracts (on-going).....		H
Repairs - purchased services (as occurs).....		H
Rented/leased equipment.....		H
Table wares/Small wares replacement	M	
Minor equipment replacement.(less than \$500).....		H
Major equipment replacement.(\$500 or more).....		H
Postage.....	M	
Uniforms.....		H
Armored car service for the Retail Foodservice Area.....	M	
Bank Card Processing Charges for the Retail Foodservice Area	M	
Parking		H



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

March 17, 2021

SUBJECT: Proposed resolution reaffirming commitment of the Board of Governors to patient safety at Kern Medical Center

Requested Action: Approve; Adopt Resolution

Summary:

Operations of healthcare providers are high-risk by their nature. Kern Medical is determined to achieve consistently safe operations and to create a safe environment for patients, staff and visitors. Studies show a link between a positive safety culture and improved patient safety within a healthcare organization. The Joint Commission defines safety culture as the product of individual and group beliefs, values, attitudes, perceptions, competencies, and patterns of behavior that determine the organization's commitment to quality and patient safety.

On March 18, 2020, your Board adopted Resolution No. 2020-004 affirming its commitment to patient safety at Kern Medical Center. This resolution, among other things, directed staff to develop a Safety Plan including tactics to implement the following safety strategies: Just Culture; Engage Leadership; Increase Communication; Encourage Reporting; and Employee Engagement, but due to the COVID-19 pandemic such development was placed on hold to allow staff to direct their attention to caring for patients. The attached proposed resolution allows your Board to reaffirm its commitment to patient safety at Kern Medical and directs staff to resume the development of a Safety Plan that includes tactics to implement the above-referenced safety strategies.

Therefore, it is recommended that your Board adopt the attached proposed resolution that reaffirms the commitment of the Board of Governors to patient safety at Kern Medical Center, and direct staff to resume the development and implementation of tactics to execute the five identified safety strategies.

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

In the matter of:

Resolution No. 2021-____

**REAFFIRMING COMMITMENT OF THE
BOARD OF GOVERNORS TO PATIENT
SAFETY AT KERN MEDICAL CENTER**

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 17th day of March, 2021, 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 Board of Governors of the Kern County Hospital Authority is the body in whom the final authority and responsibility is vested for the conduct of Kern Medical Center (see Cal. Code Regs., tit. 22, § 70035); and

(b) The quality and safety of care provided by Kern Medical Center staff depends on many factors, including a culture that fosters safety and quality; and

(c) The Joint Commission defines Safety Culture as the sum of what an organization is and does in the pursuit of safety and the product of individual and group beliefs, values, attitudes, perceptions, competencies, and patterns of behavior that determine the organization's commitment to quality and patient safety; and

(d) The Board of Governors acknowledges the high-risk nature of Kern Medical Center's activities and is determined to achieve consistently safe operations and create a safe environment for patients, staff and visitors; and

(e) The Board of Governors acknowledges that in order to be successful, the culture of safety must create a transparent, non-punitive approach to reporting and learning from adverse events, close calls and unsafe conditions; and

(f) The Board of Governors has determined that clear, just and transparent risk-based processes are critical for recognizing and distinguishing human errors and system errors from unsafe, blameworthy actions; and

(g) The Board of Governors acknowledges that collaboration across ranks and disciplines is paramount in finding solutions to safety concerns; and

(h) The Board of Governors recognizes that its body is responsible for facilitating a culture of safety within the organization and is committed to addressing safety concerns and creating a safe environment; and

(i) The Board of Governors is committed to provide a consistent and sustained message about safety throughout the organization; and

(j) On March 18, 2020, the Board of Governors adopted Resolution No. 2020-004 affirming its commitment to patient safety at Kern Medical Center; and

(k) On March 18, 2020, the Board of Governors directed staff to develop a Safety Plan including tactics to implement the following safety strategies: Just Culture; Engage Leadership; Increase Communication; Encourage Reporting; and Employee Engagement, but due to the COVID-19 pandemic such development was placed on hold to allow staff to direct their attention to caring for patients; and

(l) The Board of Governors desires to reaffirm its commitment to patient safety at Kern Medical Center.

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 reaffirms its commitment to patient safety at Kern Medical Center.

3. This Board hereby reaffirms the philosophy that Kern Medical Center strives to be a highly reliable organization and provide a safe environment for patients, staff and visitors.

4. This Board hereby directs staff to resume the development of a Safety Plan that includes tactics to implement the following safety strategies: Just Culture; Engage Leadership; Increase Communication; Encourage Reporting; and Employee Engagement.

5. This Board hereby declares that its commitment to patient safety at Kern Medical Center shall be an ongoing commitment.

6. The provisions of this Resolution shall be effective, in force, and operative as of the 17th day of March, 2021.

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

Kern Medical Center
Legal Services Department



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

March 17, 2021

Subject: Proposed Craneware Services Agreement for the purchase of re-templating the Chargemaster and Physician Revenue Toolkit

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Services Agreement with Craneware plc for the purchase of re-templating of the Chargemaster and Physician Revenue Toolkit. Kern Medical is licensed for both the Chargemaster and Physician Revenue Toolkit, therefore, it is recommended the applications be re-templated from the McKesson STAR (Legacy system) template to the Cerner Millennium (new host system) template.

The Chargemaster is Kern Medical’s catalog of services, procedures, supplies, and pharmaceuticals, in which Kern Medical can bill patients and insurances. An accurate Chargemaster reduces claim errors and payer denials, thereby ensuring timely claim submission and payer reimbursement; as well as compliance with federal, state and local guidelines.

Craneware’s professional fees for this one-time re-templating are \$9,400, as outlined below.

Licensed Products and Services	Service Fee (invoiced year 1)
Chargemaster Toolkit File Template <i>Cerner Millennium</i>	\$5,793
Physician Revenue Toolkit® File Template <i>Cerner Millennium</i>	\$3,607
Licensed Products and Services Total	\$9,400

Counsel is unable to approve as to form due to non-standard terms which include the limitation of liability to the amounts paid pursuant to the Agreement, limitations on indemnification, binding arbitration, with attorney fees, and no termination without cause.

Even with these issues, Kern Medical recommends that your Board approve the Craneware Services Agreement for the re-templating of the Chargemaster and Physician Revenue Toolkit, effective March 17, 2021 for a term of one year, for a one-time fee of \$9,400 and authorize the Chairman to sign.

CRANWARE SERVICES AGREEMENT

This SERVICES AGREEMENT ("Agreement") is entered into by and between Craneware plc, a corporation organized under the laws of the United Kingdom with corporate headquarters located at 1 Tanfield, Edinburgh, EH3 5DA, United Kingdom, by and through its agent and wholly owned subsidiary, Craneware, Inc., a Florida corporation, for the benefit of Craneware plc and all of its subsidiaries (collectively, "Craneware") and **Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center**, organized under the laws of the State of California with an address at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Customer") and is effective as of the date of full execution.

1. TERM. This Agreement shall be for a duration of one (1) year unless earlier terminated in accordance with this Agreement and shall commence on March 17, 2021 (the "Start Date") and terminate at 11:59 PM Eastern Standard Time on March 16, 2022 unless the Scope of Services is completed sooner.

2. CUSTOMER'S OBLIGATIONS.

(a) **Payment.** The fees for the Scope of Services shall be payable in the amounts and upon the dates set-forth on Exhibit A. Any other fees including travel will be approved in writing by Customer prior to being expended in performance of Craneware's duties under this Agreement. Such charges (e.g., reimbursement of travel expenses) are due upon receipt of an invoice for same. *As a Government Entity, Customer follows the U.S. General Services Administration (GSA) per diem rates for lodging, meals, and incidental expenses and will reimburse at such rates.* Payments not made timely shall accrue interest at the lesser of (1) the rate of 1.5% per month; or (2) the maximum rate allowed by the applicable law. Any sums owed for Sales Taxes as per the following sub-section "Sales Tax" shall be owed in addition to the Fees listed in the Scope of Services Fee Schedule.

(b) **Customer Resources.** Customer shall identify a primary contact person to coordinate all efforts falling within the scope of this Agreement. Customer agrees to provide space, audio visual equipment, and access to other Customer resources necessary for the successful completion of the Scope of Services. Such access may, upon mutual agreement, include access to Customer's training environment, or, at Customer's discretion, Customer's live system. Customer will transmit electronically data files to Craneware as necessary for Craneware to perform its obligations under this Agreement. Customer acknowledges its data must be delivered to Craneware in an industry-standard, non-corrupted format compatible with Craneware's specifications. Craneware will provide Customer with general guidelines for the composition and preparation of Customer's data and transmit this information to the Customer's Project Manager within thirty (30) days of the Start Date of this Agreement. As long as Craneware fulfills its obligation to transmit general guidelines for the composition and preparation of Customer's data as required under this section of this Agreement, any risk and any expense associated with Customer's delay in taking any necessary steps to complete composition and preparation of its data: (1) shall be assumed and absorbed by Customer; and (2) shall not serve as grounds for suspension of Customer's obligations under this Agreement.

(c) **Responsibility for Preparation of Any Patient Charges and Claims for Reimbursement.** Craneware and Customer hereby stipulate that the Scope of Services Fee Schedule does not make determinations on how to code, bill or set up the Customer's charge master functions or other financial or accounting files, and it is the responsibility of the Customer to exercise appropriate judgment and bear ultimate responsibility for Customer's charge master function, billing and coding determinations, and claims for reimbursement from any third-party payer.

3. TERMINATION; SUSPENSION. Craneware reserves the right to suspend its performance under this Agreement and/or terminate this Agreement if any Customer payment is more than sixty (60)

days past due. Written notice of past due status shall not be a prerequisite to the exercise of Craneware's rights under this sub-section. Except as otherwise set forth herein, this Agreement may be terminated by any party upon thirty (30) days written notice of the material breach of this Agreement by any other party, which breach has remained uncured for a period of thirty (30) days from the date of written notice thereof (the "Cure Period"), provided that if the material breach cannot reasonably be cured within thirty (30) days, the breaching party must commence to cure within the thirty (30) day period and diligently prosecute the cure until the breach is cured. Upon an alleged material breach, the aggrieved party shall provide written notice to all parties of the alleged material breach detailing the breach and specifying any possible cures thereof. If Customer is the breaching party, upon expiration of the Cure Period, all amounts remaining due under the remainder of Term then in effect shall be deemed to have been automatically accelerated and shall become immediately due and owing. No actions undertaken by either party to cure the alleged breach shall be treated as an admission of the commission of a material breach. In addition to any other provisions of this Agreement that, by their terms, survive the termination or expiration of this Agreement or that must survive in order to give meaning to other provisions of the Agreement, the following provisions of this Agreement will survive termination or expiration of this Agreement: § 2 "Customer's Obligations", § 3 "Termination", and § 4 "General Terms and Conditions".

4. GENERAL TERMS AND CONDITIONS.

- (a) **Notices.** All notices, requests, demands and other communications (collectively, "Notices") or any other communication provided for herein shall be in writing and shall be sent via certified U.S. mail, return receipt requested or by a commercial courier or delivery service that provides a delivery tracking feature, addressed as follows:

Craneware
3340 Peachtree Rd., N.E., Ste. 850
Atlanta, GA 30326

with an emailed copy to:
contracts@craneware.com

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

If the last day of any notice period falls on a Saturday, Sunday or federal holiday, such notice period shall be extended to the next regular business day. Either party may change the address or designated person for receiving Notices by providing notice to the other party in accordance with this Section.

- (b) **Severability.** If any provision of this Agreement is held illegal or unenforceable, that provision will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Agreement will not be affected.
- (c) **Sales Tax.** Customer may have no obligation to pay any sales, use, or similar taxes if and to the extent Customer qualifies under an applicable tax exemption, in which case Customer shall attach to this Agreement as Exhibit D "Customer's Sales Tax Exemption Certificate" all such applicable exemption certificates. Customer will be responsible for payment of any sales, use, excise, value-added, personal property, export, import, withholding, transaction privilege, assessments, penalties, late fees, and interest charges or similarly imposed taxes (collectively, "Taxes") assessed, levied, or imposed by any tax authority with respect to the payments Customer makes to Craneware under this Agreement (except for any taxes based on Craneware's net income). The pricing set-forth in this Agreement, as amended from time-to-time by the parties, includes no Taxes. Customer agrees that, if at any time during or after the Term, any tax authority asserting jurisdiction over Customer assesses liability for Taxes, or if during or after the Term any tax authority having jurisdiction over Customer or any Customer Facility imposes one or more Taxes or revokes (through legislation or agency decision) any tax

exemption previously relied upon by Customer, Customer shall assume full responsibility for payment of any and all Taxes due. Craneware will either add any such Taxes to the amounts due under this Agreement or invoice Customer separately for Taxes and Customer shall promptly pay or reimburse Craneware for any Taxes payable or collectable by Craneware. Customer acknowledges that Craneware will be relying upon Customer's determination as to the applicability of any exemption certificate it may have and agrees to indemnify Craneware for any damages.

- (d) **Dispute Resolution.** Any dispute, controversy or claim arising out of, relating to, or in connection with this Agreement, including the breach, termination or validity thereof, shall be resolved exclusively by binding arbitration conducted by the American Arbitration Association (the "AAA") in accordance with its Commercial Arbitration Rules then in effect (the "Rules") before a single arbitrator who neither resides nor works in any county in which any Customer Facility is situated, with the final hearing to be held in the county or parish of Customer's headquarters. The arbitral tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate. The parties agree to arbitrate solely on an individual basis, and, regardless of the AAA's Rules, this Agreement does not permit class arbitration or any claims brought as a plaintiff, claimant, or class member in any class or representative proceeding. The arbitral tribunal may not consolidate the claims of any party to this Agreement with those of any third party, and may not otherwise preside over any form of a representative or class proceeding. A party may enter judgment on the award rendered by the arbitrator in any court having jurisdiction. The prevailing party shall be entitled to recover all reasonable attorneys' fees and costs related to the dispute and arbitration.
- (e) **Customer Acknowledgment.** Customer acknowledges and agrees: (i) claims regulations are subject to interpretation by the applicable governmental or private payor, and Craneware neither represents nor guarantees a governmental or private payor will not interpret a claims regulation in a manner inconsistent with the interpretations suggested by Craneware; (ii) the Services may not detect all errors or irregularities; (iii) not all errors or irregularities detected by Craneware will prove, on review, to be actual errors or irregularities; (iv) errors or irregularities in claim submissions to governmental or other payors can lead to criminal and/or civil liability for false, fraudulent, or otherwise improper claims; and (v) Customer will be solely responsible for all submissions of claims to payors, including accuracy and propriety, determining whether any submission contains errors, and for all action necessary to disclose or correct such errors.
- (f) **Mutual Indemnification.** Each Party (each an "Indemnitor") shall indemnify, defend, and hold harmless the other party, and its respective directors, officers, parent entities, subsidiaries, employees (each being an "Indemnitee") from and against any and all liabilities, claims, costs, losses, fines, damages, and reasonable expenses (including reasonable attorneys' fees and expenses, if the indemnitor fails to provide a defense) caused by the negligence in either act or omission of the Indemnitor that is the direct, proximate cause of damage to the Indemnitee's property or personal injury to one or more third-parties. If applicable law prohibits either party from being an Indemnitor under this sub-section, this sub-section shall be void and of no effect.
- (g) **Limitation on Liabilities.** Neither party will be liable to the other party under this Agreement for any punitive, exemplary, or consequential damages, whether based on breach of contract, warranty, tort, product liability, workers compensation, or otherwise, whether or not a party has been advised of the possibility of such damage. In no event shall the total liability of Craneware under this Agreement exceed the amounts paid to Craneware pursuant to this Agreement. The Scope of Services Fee Schedule is not meant to replace professional judgment. In no event shall Craneware be responsible for damages or injuries to Customer or third parties due to Customer's interpretation of data provided, delay in providing data, or the accuracy or inaccuracy of data provided by Craneware. This limitation of liability shall not apply to a party's gross negligence or willful misconduct. The liabilities or obligations of Customer with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Customer and shall not be or

become the liabilities or obligations of the County of Kern or any other entity, including the state of California. California Health and Safety Code Section 101853(g).

- (h) **Privacy and Access to Records.** Craneware agrees to comply with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d ("HIPAA"), as amended, along with any current and future regulations promulgated thereunder, including the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 ("Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162, and 164 ("Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transaction Regulations"), as amended from time to time (collectively referred to herein as "HIPAA Requirements"). Craneware agrees not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations, herein "PHI") or Individually Identifiable Health Information (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of this Agreement. Craneware will only utilize such data in furtherance of the objectives of this Agreement and for the benefit of Customer's operations, consistent with HIPAA. Craneware may only make use of such data to fulfill its obligations under the Agreement and may only make use of (i) de-identified data (in accordance with 45 C.F.R. § 164.514) for benchmarking, or (ii) data for data aggregation as that term is used in 45 C.F.R. § 164.501, and (iii) other lawful purposes set forth in 45 C.F.R. § 164.500, et seq. Craneware agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services to the extent required for determining compliance with the HIPAA Requirements. In accordance with 42 CFR Subpart D § 402.300 and subsequent Sections, Craneware agrees to make available, upon request, its books, documents and records to Customer or to the Secretary, U.S. Department of Health and Human Services, the U.S. Comptroller General, and their representatives, to the extent that such books, documents, and records are necessary to certify the nature and extent of Customer's costs and payment for Services provided by Craneware. Such books, documents, and records shall be preserved and available for four (4) years after the furnishing of Services by Craneware.
- (a) **Confidential Information.** "Confidential Information" shall mean all proprietary, secret or confidential information or data relating to either party and their respective operations, employees, services, patients or customers. Each party acknowledges that if it receives Confidential Information, it shall: (a) maintain the Confidential Information in strict confidence; (b) use at least the same degree of care in maintaining the secrecy of the Confidential Information as it uses in maintaining the secrecy of its own proprietary, secret, or confidential information, but in no event less than a reasonable degree of care or beneath the level required by the applicable Uniform Trade Secret Act; (c) use Confidential Information only to fulfill its obligations under this Agreement; and (d) return or destroy all documents, copies, notes, or other materials containing any portion of the Confidential Information upon request by the other party. Notwithstanding the foregoing, Craneware may make use of Customer's Confidential Information for benchmarking purposes, for the benefit of Customer's operations, and for product development and functionality. Customer shall neither disclose Craneware's Confidential Information to outside consultants nor permit outside consultants to access or utilize the Licensed Products or Services absent Craneware's prior written approval, which shall not be unreasonably withheld. Each party shall assume full liability for (i) infringement of the disclosing party's intellectual property rights caused by any receiving party's consultant, employee, or independent contractor; (ii) breach of this Agreement's confidentiality restrictions by any such third-party; and (iii) any breach of any other duty, obligation or restriction agreed to by Customer under this Agreement committed by such third-party. Nothing in this Agreement shall be construed to grant any third-party "third party beneficiary" status under this Agreement. Neither party shall disclose the terms of this Agreement to any other person or entity outside its organization and affiliates other than its professional advisors or as required by law or applicable regulatory body. For purposes of this provision, an affiliate is an entity in which a party maintains an ownership position in or by, and the disclosure is required so that the disclosing party may fulfill its obligations hereunder or as required by law or

applicable regulatory body. Neither party shall have any obligation concerning any portion of the Confidential Information which: (a) was known to it before receipt, directly or indirectly, from the disclosing party; (b) is lawfully obtained, directly or indirectly, by it from a non-party which was under no obligation of confidentiality; (c) is or becomes publicly available other than as a result of an act or failure to act by the receiving party; (d) is required to be disclosed by the receiving party by applicable law, regulatory body, or legal process; or (e) is developed by the receiving party independent of the Confidential Information disclosed by the disclosing party.

- (i) **Relationship of Parties.** Each party enters into and performs this Agreement as an independent contractor of the other party. This Agreement will not be construed as constituting a relationship of employment, agency, partnership, joint venture or any other form of legal association, except as expressly set forth in this Agreement. Each party will have no power, and will not represent that it has any power, to bind the other party or to assume or to create any obligation or responsibility on behalf of the other party or in the other party's name. Except as expressly provided in this Agreement, nothing in this Agreement will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- (j) **Construction of Agreement.** This Agreement has been negotiated by the parties and its provisions will not be presumptively construed for or against either party. The headings and section titles in this Agreement are used for convenience only, and will not affect the construction or interpretation of this Agreement.
- (k) **Omnibus Reconciliation Act of 1980.** Both parties agree to make available upon the written request of the Secretary of Health and Human Services or the Comptroller General, or their representatives, this Agreement and such books, documents and records as may be necessary to verify the nature and extent of the costs of the services rendered hereunder to the full extent required by the Centers for Medicare and Medicaid Services implementing Section 952 of the Omnibus Reconciliation Act of 1980, codified at 42 U.S.C. Section 1395x(v)(1)(I), or by any other applicable federal or state authority.
- (l) **Exclusion from Participation in Federal Health Care Programs.** Neither Craneware nor any of Craneware's agents, employees, or any substitutes thereof providing services under this Agreement is or shall be during the Term of this Agreement excluded, debarred or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal Health Care Programs"); (b) convicted of a criminal offense related to the provision of healthcare items or services even if not yet excluded, debarred or otherwise declared ineligible to participate in the Federal Health Care Programs; or (c) under investigation or otherwise aware of any circumstances which may result in Craneware (or Craneware's agents, employees, or any substitutes providing services under this Agreement) being excluded from participation in the Federal Health Care Programs. Craneware will immediately notify Customer of any change in the status of the representation set forth in this section, and Craneware will immediately remove from providing services at or for Customer any of its personnel that are or become ineligible to participate in the Federal Health Care Programs.
- (m) **Counterparts, Facsimile Signatures, and Electronic Signatures.** The parties may execute this Agreement in one or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument. The parties may execute this Agreement via facsimile, and such facsimile signatures shall be deemed to be originals for all purposes. In addition to facsimile signatures, this Agreement may be executed by either or both parties in accordance with the applicable version of the Uniform Electronic Transactions Act ("UETA") and the Electronic Signatures in Global and National Commerce Act ("ESIGN"). Both parties hereto agree to conduct transactions by electronic means and hereby affirmatively consent to use electronic records to memorialize and execute the Agreement.

(n) **Entire Agreement.** The Agreement, along with its exhibits, each of which is incorporated into the Agreement, constitutes the entire Agreement between Craneware and Customer regarding the Scope of Services Fee Schedule described herein, superseding all previous agreements pertaining to Licensed Products and Services described herein. All prior agreements, representations, warranties, statements, requests for proposals, negotiations, understandings and undertakings are superseded hereby and Customer hereby represents and acknowledges that in entering into this Agreement that it did not rely on representations or warranties other than those explicitly set forth herein. This Agreement may only be modified through written agreement signed by an authorized agent of each party, and no oral modifications shall be effective to change the terms and conditions of this Agreement.

Agreed to by the parties hereto:

SIGNED ON BEHALF OF CRANEWARE		SIGNED ON BEHALF OF CUSTOMER	
SIGNATURE		SIGNATURE	
PRINT NAME		PRINT NAME	Russell Bigler
TITLE		TITLE	Chairman, Board of Governors
DATE		DATE	

CRANEWARE REPRESENTATIVE: Dennis Nasto
 DATE OF PRESENTATION: October 6, 2020
 DATE REVISED: March 9, 2021
 RECIPIENT NAME: Sharon Gumatao
 RECIPIENT TITLE: CDM System Coordinator

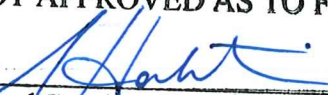
**REVIEWED ONLY
 NOT APPROVED AS TO FORM**
 By 
 Legal Services Department

EXHIBIT A – SCOPE OF SERVICES FEE SCHEDULE

- **Service Fees** (subject to § 2 sub-section “Payment”)

** Professional Services are outlined in attached Scope of Services, Exhibit C*

Licensed Products and Services*	Service Fee (invoiced year 1)
Chargemaster Toolkit File Template*** <i>Cerner Millennium</i>	\$5,793
Physician Revenue Toolkit® File Template <i>Cerner Millennium</i>	\$3,607
Licensed Products and Services total	\$9,400**

*** Fees are due upon contract signature.*

**** Customer acknowledges that retemplating of the Chargemaster Toolkit file requires rewriting of the related scripts used within Integration for Chargemaster Management-CMT for its continued use. Updated scripts are available via separate mutually agreed upon written Scope of Work and fees.*

EXHIBIT B – CONTACT INFORMATION

Main Contact	Name:	Sharon Gumataotao	Email:	Sharon.gumataotao@kernmedical.com
	Title:	CDM System Coordinator	Phone:	661.609.0294
CDM Contact	Name:	Sharon Gumataotao	Email:	Sharon.gumataotao@kernmedical.com
	Title:	CDM System Coordinator	Phone:	661.609.0294
IT Contact	Name:	Helen Cullen	Email:	Hellen.Cullen@kernmedical.com
	Title:	IT Manager Rev Cycle Applications	Phone:	661.342.8789
CFO/VP Finance	Name:	Andy Cantu	Email:	Andy.cantu@kernmedical.com
	Title:	Chief Financial Officer	Phone:	661.326.2603
Accounts Payable Contact	Name:	John Mills	Email:	john.mills@kernmedical.com
	Title:	Director of Finance	Phone:	661.862.4130
Billing Address:	Kern Medical 1700 Mount Vernon Ave Bakersfield, CA 93306 County: Kern			

EXHIBIT C --SCOPE OF SERVICES

Chargemaster Toolkit® File Template

Purpose: This statement of work covers the template process of a hospital charge description master (CDM) file for Chargemaster Toolkit. The goal of this project is to assist Customer with the addition of a CDM file to the existing repository. This Scope of Work shall be completed according to defined deliverables and budgeted hours. To the extent Customer fails to timely meet its deliverables, or requests services not detailed in this Scope of Work, the parties will mutually agree upon additional hours at the then current professional services rate, in writing, prior to continuation of the remaining Scope of Work.

Project Objectives:

Upon completion, the additional hospital CDM file will be accessible to the Customer CDM Team within Craneware Chargemaster Toolkit.

Project Scope:

This statement of work encompasses the templating of the additional CDM File to Craneware's file format, and placing it in the existing Craneware Shared Repository. Craneware will recommend changes required to the established CDM business process to encourage the effective use of Craneware software—now including the new file in the Chargemaster Toolkit.

Craneware Deliverables:

- Technical specifications provided in the Starter Pack URL sent by Craneware Support
- Creation and review of project plan
- Delivery of Chargemaster Toolkit .hpt file (encrypted CDM file)

Customer Deliverables:

- Distribute and review Starter Pack materials
- Ensure availability of required staff for all calls
- Confirm milestone dates in project plan
- Confirm data extract delivery date to Craneware Support
- Creation and delivery of hospital CDM extract to Craneware Support
- Completion of Customization Agreement Form (CAF) to Craneware Support

Physician Revenue Toolkit® File Template

Purpose: This statement of work covers the template process of a single physician charge description master (CDM) file for Physician Revenue Toolkit. The goal of this project is to assist Customer with the addition of a CDM file to the existing repository. This Scope of Work shall be completed according to defined deliverables. To the extent Customer fails to timely meet its deliverables, or requests services not detailed in this Scope of Work, the parties will mutually agree upon additional hours at the then current rate, in writing, prior to continuation of the remaining Scope of Work.

Project Objectives:

Upon completion, the additional physician CDM file will be accessible to the Customer CDM Team within Craneware Physician Revenue Toolkit.

Project Scope:

This statement of work encompasses the templating of the additional physician CDM File to Craneware's file format, and placing it in the existing Craneware Shared Repository. Craneware will recommend changes required to the established CDM business process to encourage the effective use of Craneware software.

Craneware Deliverables:

- Technical specifications provided in the Starter Pack URL sent by Craneware Support
- Creation and review of project plan
- Delivery of Physician Revenue Toolkit .phy file (encrypted CDM file)

Customer Deliverables:

- Distribute and review Starter Pack materials
- Ensure availability of required staff for all calls
- Confirm milestone dates in project plan
- Confirm data extract delivery date to Craneware Support
- Creation and delivery of physician CDM extract to Craneware Support
- Completion of Customization Agreement Form (CAF) to Craneware Support

EXHIBIT D - CUSTOMER'S SALES TAX EXEMPTION CERTIFICATE



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

March 17, 2021

SUBJECT: Proposed renewal and binding of all-risk property insurance through PRISM and earthquake coverage through Specialty Risk Underwriters and Evanston Insurance Company

RECOMMENDED ACTION: Approve renewal and binding of all-risk property insurance and earthquake coverage from March 31, 2021 through March 31, 2022, in an amount not to exceed \$580,573, plus administrative fees; Authorize the Chief Executive Officer to sign the Premium Finance Agreement and Certificate of Incumbency with IPFS Corporation

SUMMARY: The Authority requests your Board approve the renewal and binding of the following insurance coverages for the period March 31, 2021 through March 31, 2022:

- Property
- Earthquake

Property

The Authority recommends renewing property coverage through PRISM (formerly CSAC-EIA) for all-risk coverage protecting buildings, contents, equipment, business interruption and flood.

- Insurance Carriers: Various Carriers within Tower I of the PRISM Program
- A.M. Best Rating: Pursuant to PRISM's minimum financial rating specifications
- Term: March 31, 2021 – March 31, 2022
- Coverage: Provides the Authority and its named-insureds with all-risk property coverage, through various carriers in a group policy procured and through a Joint Powers Authority, to include buildings, contents, equipment, business interruption and flood
- Limit per Occurrence: \$600,000,000 All Risk; \$200,000,000 Flood
- Retention (SIR): \$100,000
- Annual Premium: \$219,000 to \$251,000 (Not yet finalized; refer to attached summary)

Earthquake

The Authority recommends renewing earth movement coverage through Specialty Risk Underwriters and Evanston Insurance Company for coverage protecting buildings, contents, equipment and business interruption against the peril of earthquake.

- Insurance Carriers: Specialty Risk Underwriters (with Lloyd's syndicates and other insurers) and Evanston Insurance Company

- A.M. Best Rating:
 - Specialty Risk Underwriters, All syndicates and other insurers with a minimum of (A- (Excellent) IX)
 - Evanston Insurance Company (A (Excellent) XV)
- Term: March 31, 2021 – March 31, 2022
- Coverage: Provides the Authority and its named-insureds with dedicated limits of coverage against the peril of earthquake, through various underwriters/syndicates and insurance companies for buildings, contents, equipment, and business interruption
- Limit per Occurrence: \$25,000,000
- Retention (SIR): 5% per unit / \$100,000 minimum
- Annual Premium: \$329,573

Total Annual Premiums: \$548,573 to \$580,573 (as recommended)

Summary Regarding Variance in Property Premiums:

The Authority presently insures its property, including contents, via a member-directed insurance risk sharing pool administered by Public Risk, Innovation, Solutions, and Management (PRISM), formerly known as the California State Association of Counties Excess Insurance Authority (CSAC-EIA). PRISM, a Joint Powers Authority, provides to its members an ultra-competitively priced all-risk policy, including business interruption. Coverage is for damage to real and personal property from all risk perils, including flood.

For the renewing term starting March 31, 2021, the combined cost for all-risk property coverage (excluding earthquake) has yet to be finalized due to a rather volatile and hard market; however, the latest premium (version 2) estimate provided by PRISM to the Authority reflects an estimated premium range of \$219,000 to \$251,000, up from \$170,448 for the year 2020/2021. This represents an increase of between \$48,552 to \$80,552 with a final premium allocation to be determined and disclosed by PRISM following its March board meeting, which occurs your Board's March meeting. This represents an increase of 28% to 47% over the prior year with rates expected to continue rising in each subsequent renewal for the foreseeable future. PRISM continues to recommend, for budgeting purposes, that the Authority approve at the high end, yet acknowledges this amount to be conservative though premiums could potentially be in excess of these estimates should further catastrophic events or economic downturn result in a further hardening of the market. The Authority is not alone with respect to the rising rates as such increases are being implemented across the board due to an increasing severity of catastrophic events with many organizations experiencing claims recognizing even higher increases in their respective premiums.

Summary Regarding Change in Earthquake Coverage

For the term renewing March 31, 2021, Specialty Risk Underwriters, the incumbent carrier for earthquake coverage, declined to write the full policy limits as expiring and returned with an increase in premium on the \$15,000,000 they were willing to offer. This was primarily the result of a shrinking market capacity as well as a need to diversify existing risk. The Authority will fill the remaining

\$10,000,000 coverage gap for a total combined limit of \$25,000,000 by obtaining a policy with Evanston Insurance Company. Through this approach, the Authority is able to achieve the level of coverage approved by your Board on March 18, 2020, following discussion of the report prepared by Holmes Structures and AmWINS while simultaneously mitigating the increase in premiums charged.

Premium Financing

The Authority recommends financing the referenced premiums as follows:

1. PRISM will provide in-house financing of the property coverage for an additional fee of up to \$1,613 (or less, depending on the final premium allocation) with the cost of coverage and financing split between 12 equal payments; and
2. IPFS Corporation of California will finance the earthquake coverage. Financing will require a 20% cash down payment (\$65,915), plus finance charges at a rate of 2.5% (up to \$3,031), for total payments (excluding down payment) not to exceed \$266,689, as set forth below:

Total Premium	\$329,573
Cash down payment	\$65,915
Amount financed	\$263,658
Finance charges (2.5%)	\$3,031
Total payments (Excluding Down Payment)	\$266,689

3. Financing through IPFS Corporation requires the signing of a separate Premium Finance Agreement and Certificate of Incumbency.

Therefore, it is recommended that your Board approve the renewal and binding of property and earthquake insurance coverage from March 31, 2021 through March 31, 2022, with the option to finance property premiums through PRISM and earthquake premiums through IPFS Corporation of California, in an amount not to exceed \$585,217, which includes administrative fees; and authorize the Chief Executive Officer to sign the Premium Finance Agreement with IPFS Corporation and Certificate of Incumbency.

Line of Coverage	FY 20/21	FY 21/22				% Change from 20/21 to 21/22
1 Property	\$ 170,448	\$ 251,000				47.26%
2 Earthquake	\$ 294,970	\$ 329,573				11.73%
Total	\$ 465,418	\$ 580,573				Average % 29.50%

Summary of Significant Changes Per Policy Year

1 Property

In **FY 20/21**, KCHA opted not to include the peril of earthquake within the property policy due to a significant increase in costs, the inability to choose alternate coverage amounts nor an option for dedicated vs. shared limits.

For **FY 21/22**, the incumbent carrier has eliminated Communicable Disease Coverage in response to the present pandemic as well as reduced coverage for acts of terror from \$200M to \$100M. *Premium shown above is represented as PRISM's high estimate.*

2 Earthquake

In **FY 20/21**, KCHA opted to purchase a stand-alone earthquake policy with dedicated limits of \$25M resulting in a reduced annual premium.

For **FY 21/22**, the incumbent carrier, Specialty Risk Underwriters, has declined to write or offer the same policy limits of \$25M. Instead, Specialty Risk Underwriters has offered to write \$15M at an increased premium per dollar of coverage. Alliant, KCHA's broker, sourced another carrier, Evanston Insurance Company, for the remaining \$10M in coverage for a total combined limit of \$25M.

Beginning FY 20/21, property and earthquake coverage was presented to the Board separately from the annual renewal of all other coverages. This was partly due to all other coverages renewing on 07/01/2021 but primarily due to the placement of earthquake separately with a standalone carrier as opposed to a covered peril within the property policy.

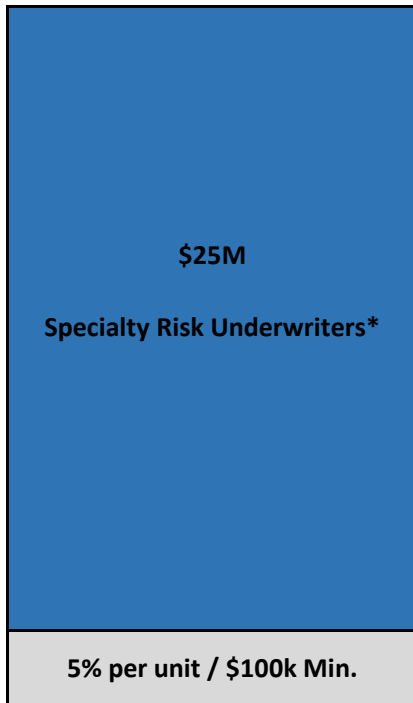
Kern County Hospital Authority

EARTH MOVEMENT INSURANCE PROGRAM OVERVIEW

Expiring 03/31/2020 - 03/31/2021 vs. Renewal 03/31/2021 - 03/31/2022

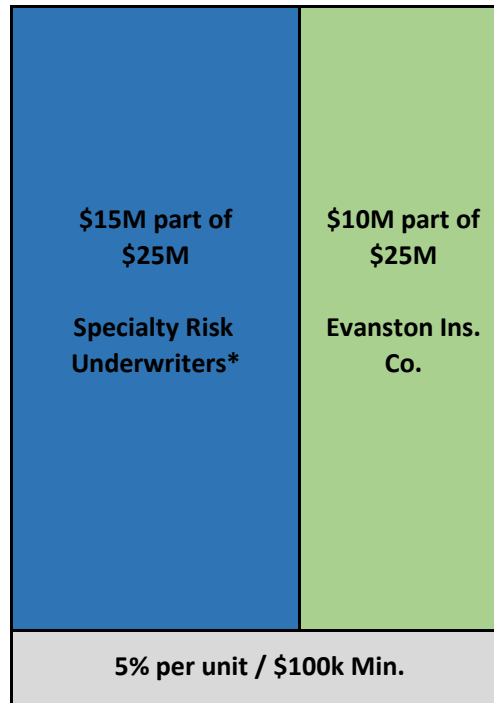
EXPIRING PROGRAM

Earth Movement - \$25M
03/31/2020 - 03/31/2021



PROPOSED RENEWAL

Earth Movement - \$25M
03/31/2021 - 03/31/2022



Recap - Total Values and Premiums

<u>Expiring Values</u>	<u>Renewal Values</u>	<u>% Change</u>
\$534,079,401	\$542,495,450	1.58%
<u>Expiring Premium</u>	<u>Renewal Premium</u>	<u>% Change</u>
\$294,970	\$329,573	11.73%

Premiums include taxes and fees

* Specialty Risk Underwriters' coverage is provided by multiple insurance carriers, each providing a specified % of the coverage limit

(Not to scale)

As of 03/01/2021

49 STEVENSON STREET
 SUITE 1275
 SAN FRANCISCO, CA 94105
 (877)687-9826 FAX: (415)796-6156
 CUSTOMER SERVICE: (800)774-8282

PREMIUM FINANCE AGREEMENT
License # 973 9750

IPFS CORPORATION
OF CALIFORNIA

A	CASH PRICE (TOTAL PREMIUMS)	\$329,572.97
B	CASH DOWN PAYMENT	\$65,915.00
C	PRINCIPAL BALANCE (A MINUS B)	\$263,657.97

AGENT (Name & Place of business) ALLIANT INSURANCE SERVICES INC 100 PINE ST STE 1100 SAN FRANCISCO, CA 94111-5113 (415)403-1400 FAX: (415)403-0773	INSURED (Name & Residence or business) KERN COUNTY HOSPITAL AUTHORITY 1700 MOUNT VERNON AVE BAKERSFIELD, CA 93306-4018 (661)326-2868 steven.chandler@kernmedical.com
--	---

Commercial

Account #: _____

LOAN DISCLOSURE
 Additional Policies Scheduled on Page 3

Quote Number: 14813130

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 2.500%	FINANCE CHARGE The dollar amount the credit will cost you. \$3,030.53	AMOUNT FINANCED The amount of credit provided to you or on your behalf. \$263,657.97	TOTAL OF PAYMENTS The amount you will have paid after you have made all payments as scheduled \$266,688.50
--	--	---	---

YOUR PAYMENT SCHEDULE WILL BE

Number Of Payments 10	Amount Of Payments \$26,668.85	When Payments Are Due Beginning: MONTHLY 04/30/2021
-------------------------------------	--	--

ITEMIZATION OF THE AMOUNT FINANCED: THE AMOUNT FINANCED IS FOR APPLICATION TO THE PREMIUMS SET FORTH IN THE SCHEDULE OF POLICIES UNLESS OTHERWISE NOTED.

Security: Refer to paragraph 1 below for a description of the collateral assigned to Lender to secure this loan.

Late Charges: A late charge will be imposed on any installment in default 10 days or more. This late charge will be 5.00% of the installment due.

Prepayment: If you pay your account off early, you may be entitled to a refund of a portion of the finance charge computed as provided in Sec. 18635, California Statute or as otherwise allowed by law. The finance charge includes a predetermined interest rate plus a non-refundable service/origination fee of \$25.00. See the terms below and on the next page for additional information about nonpayment, default and penalties.

POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY	SCHEDULE OF POLICIES INSURANCE COMPANY AND GENERAL AGENT	COVERAGE	MINIMUM EARNED PERCENT	POL TERM	PREMIUM
PENDING	03/31/2021	LLOYD'S LONDON - CERTAIN UNDERWRITE AMWINS INS. BROKERAGE OF CA, LLC	EARTHQUAK E	25.00%	12	191,100.00 Fee: 699.00 Tax: 6,233.47
Broker Fee:						\$0.00
TOTAL:						\$329,572.97

The undersigned insured directs IPFS Corporation of California (herein, "Lender") to pay the premiums on the policies described on the Schedule of Policies. In consideration of such premium payments, subject to the provisions set forth herein, the insured agrees to pay Lender at the branch office address shown above, or as otherwise directed by Lender, the amount stated as Total of Payments in accordance with the Payment Schedule, in each case as shown in the above Loan Disclosure. The named insured(s), on a joint and several basis if more than one, hereby agree to the following provisions set forth on pages 1 and 2 of this Agreement: **1. SECURITY:** To secure payment of all amounts due under this Agreement, insured assigns Lender a security interest in all right, title and interest to the scheduled policies, including (but only to the extent permitted by applicable law): (a) all money that is or may be due insured because of a loss under any such policy that reduces the unearned premiums (subject to the interest of any applicable mortgagee or loss payee), (b) any unearned premium under each such policy, (c) dividends which may become due insured in connection with any such policy and (d) interests arising under a state guarantee fund. **2. POWER OF ATTORNEY:** Insured irrevocably appoints Lender attorney-in-fact with full power of substitution and full authority upon default to cancel all policies above identified, receive all sums assigned to its Lender or in which it has granted Lender a security interest and to execute and deliver on behalf of the insured documents, instruments, forms and notices relating to the listed insurance policies in furtherance of this Agreement. **3. POLICY EFFECTIVE DATES:** The finance charge begins to accrue as of the earliest policy effective date.

NOTICE: A. Do not sign this agreement before you read it or if it contains any blank space. B. You are entitled to a completely filled in copy of this agreement. C. Under the law, you have the right to pay in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. D. Keep your copy of this agreement to protect your legal rights.

**FOR INFORMATION CONTACT THE
 DEPARTMENT OF FINANCIAL INSTITUTIONS,
 STATE OF CALIFORNIA**

The undersigned hereby warrants and agrees to Agent's Representations set forth herein.

 Signature of Insured or Authorized Agent

 DATE

 Signature of Agent

 DATE

Insured and Lender further agree that: **4. AGREEMENT EFFECTIVE DATE:** This Agreement shall be effective when written acceptance is mailed to the insured by Lender. **5. DEFAULT AND DELINQUENT PAYMENTS:** If any of the following happens insured will be in default: (a) a payment is not made when it is due, (b) a proceeding in bankruptcy, receivership, insolvency or similar proceeding is instituted by or against insured, or (c) insured fails to keep any promise the insured makes in this Agreement; provided, however, that, to the extent required by applicable law, insured may be held to be in default only upon the occurrence of an event described in clause (a) above. The acceptance by Lender of one or more late payments from the insured shall not estop Lender or be a waiver of the rights of Lender to exercise all of its rights hereunder or under applicable law in the event of any subsequent late payment. **6. CANCELLATION:** Lender may cancel the scheduled policies after providing at least 10 days notice of its intent to cancel or any other required statutory notice if the insured does not pay any installment according to the terms of this Agreement or transfers any of the scheduled policies to a third party and the unpaid balance due to Lender shall be immediately due and payable by the insured. Lender at its option may enforce payment of this debt without recourse to the security given to Lender. **7. CANCELLATION CHARGES:** If Lender cancels any insurance policy in accordance with the terms of this Agreement and applicable law, then the insured shall pay Lender a cancellation charge equal to \$15.00 or the maximum amount permitted by law. If cancellation occurs, the insured agrees to pay a finance charge on the outstanding indebtedness at the maximum rate authorized by applicable state law in effect on the date of cancellation until the outstanding indebtedness is paid in full or until such other date as required by law. **8. INSUFFICIENT FUNDS (NSF) CHARGES:** If insured's check or electronic funding is dishonored for any reason, the insured will pay to Lender a fee of \$15.00 or the maximum amount permitted by law. **9. MONEY RECEIVED AFTER CANCELLATION:** Any payments made to Lender after Lender's Notice of Cancellation of the insurance policy(ies) has been mailed may be credited to the insured's account without any obligation on the part of Lender to request reinstatement of any policy. Any money Lender receives from an insurance company shall be credited to the balance due Lender with any surplus refunded to whomever is entitled to the money. In the event that Lender does request a reinstatement of the policy(ies) on behalf of the insured, such a request does not guarantee that coverage under the policy(ies) will be reinstated or continued. Only the insurance company has authority to reinstate the policy (ies). The insured agrees that Lender has no liability to the insured if the policy(ies) is not reinstated and Lender may charge a reinstatement fee where permitted up to the maximum amount allowed by law. **10. ASSIGNMENT:** The insured agrees not to assign this Agreement or any policy listed hereon or any interest therein (except for the interest of mortgagees or loss payees), without the written consent of Lender, and that Lender may sell, transfer and assign its rights hereunder or under any policy without the consent of the insured, and that all agreements made by the insured hereunder and all rights and benefits conferred upon Lender shall inure to the benefit of Lender's successors and assigns (and any assignees thereof). **11. INSURANCE AGENT OR BROKER:** The insured agrees that the insurance agent or broker soliciting the policies or through whom the policies were issued is not the agent of Lender; and the agent or broker named on the front of this Agreement is neither authorized by Lender to receive installment payments under this Agreement nor to make representations, orally or in writing, to the insured on Lender's behalf (except to the extent expressly required by applicable law). As and where permissible by law, Lender may compensate your agent/broker for assisting in arranging the financing of your insurance premiums. If you have any questions about this compensation you should contact your agent/broker. **12. FINANCING NOT A CONDITION:** The law does not require a person to enter into a premium finance agreement as a condition of the purchase of insurance. **13. COLLECTION COSTS:** Insured agrees to pay attorney fees and other collection costs to Lender to the extent permitted by law if this Agreement is referred to an attorney or collection agency who is not a salaried employee of Lender, to collect any money insured owes under this Agreement. **14. LIMITATION OF LIABILITY:** The insured agrees that Lender's liability to the insured, any other person or entity for breach of any of the terms of this Agreement for the wrongful or improper exercise of any of its powers under this Agreement shall be limited to the amount of the principal balance outstanding, except in the event of Lender's gross negligence or willful misconduct. Insured recognizes and agrees that Lender is a lender only and not an insurance company and that in no event does Lender assume any liability as an insurer hereunder or otherwise. **15. CLASSIFICATION AND FORMATION OF AGREEMENT:** This Agreement is and will be a general intangible and not an instrument (as those terms are used in the Uniform Commercial Code) for all purposes. Any electronic signature or electronic record may be used in the formation of this Agreement, and the signatures of the insured and agent and the record of this Agreement may be in electronic form (as those terms are used in the Uniform Electronic Transactions Act). A photocopy, a facsimile or other paper or electronic record of this Agreement shall have the same legal effect as a manually signed copy. **16. REPRESENTATIONS AND WARRANTIES:** The insured represents that (a) the insured is not insolvent or presently the subject of any insolvency proceeding (or if the insured is a debtor of bankruptcy, the bankruptcy court has authorized this transaction), (b) if the insured is not an individual, that the signatory is authorized to sign this Agreement on behalf of the insured, (c) all parties responsible for payment of the premium are named and have signed this Agreement, and (d) there is no term or provision in any of the scheduled policies that would require Lender to notify or get the consent of any third party to effect cancellation of any such policy. **17. ADDITIONAL PREMIUM FINANCING:** Insured authorizes Lender to make additional advances under this premium finance agreement at the request of either the Insured or the Insured's agent with the Insured's express authorization, and subject to the approval of Lender, for any additional premium on any policy listed in the Schedule of Policies due to changes in the insurable risk. If Lender consents to the request for an additional advance, Lender will send Insured a revised payment amount ("Revised Payment Amount"). Insured agrees to pay the Revised Payment Amount, which may include additional finance charges on the newly advanced amount, and acknowledges that Lender will maintain its security interest in the Policy with full authority to cancel all policies and receive all unearned premium if Insured fails to pay the Revised Payment Amount. **18. PRIVACY:** Our privacy policy may be found at <https://ipfs.com/Privacy>. **19. ENTIRE DOCUMENT / GOVERNING LAW:** This document is the entire Agreement between Lender and the insured and can only be changed in writing and signed by both parties except that the insured authorizes Lender to insert or correct on this Agreement, if omitted or incorrect, the insurer's name and the policy number(s). Lender is also authorized to correct patent errors and omissions in this Agreement. In the event that any provision of this Agreement is found to be illegal or unenforceable, it shall be deemed severed from the remaining provisions, which shall remain in full force and effect. The laws of the State of California will govern this Agreement. **20. AUTHORIZATION:** The insurance company(ies) and their agents, any intermediaries and the agent / broker named in this Agreement and their successors and assigns are hereby authorized and directed by insured to provide Lender with full and complete information regarding all financed insurance policy(ies), including without limitation the status and calculation of unearned premiums, and Lender is authorized and directed to provide such parties with full and complete information and documentation regarding the financing of such insurance policy(ies), including a copy of this Agreement and any related notices. **21. WAIVER OF SOVERIGN IMMUNITY:** The insured expressly waives any sovereign immunity available to the insured, and agrees to be subject to the laws as set forth in this Agreement (and the jurisdiction of federal and/or state courts) for all matters relating to the collection and enforcement of amounts owed under this Agreement and the security interest in the scheduled policies granted hereby.

AGENT/BROKER REPRESENTATIONS

The agent/broker executing this, and any future, agreements represents, warrants and agrees: (1) installment payments totaling \$0.00 and all applicable down payment(s) have been received from the insured in immediately available funds, (2) the insured has received a copy of this Agreement; if the agent/broker has signed this Agreement on the insured's behalf, the insured has expressly authorized the agent/broker to sign this Agreement on its behalf or, if the insured has signed, to the best of the undersigned's knowledge and belief such signature is genuine, (3) the policies are in full force and effect and the information in the Schedule of Policies including the premium amounts is correct, (4) no direct company bill, audit, or reporting form policies or policies subject to retrospective rating or to minimum earned premium are included, except as indicated, and the deposit of provisional premiums is not less than anticipated premiums to be earned for the full term of the policies, (5) the policies can be cancelled by the insured or Lender (or its successors and assigns) on 10 days notice and the unearned premiums will be computed on the standard short rate or pro rata table except as indicated, (6) there are no bankruptcy, receivership, or insolvency proceedings affecting the insured, (7) to hold Lender, its successors and assigns harmless against any loss or expense (including attorney fees) resulting from these representations or from errors, omissions or inaccuracies of agent/broker in preparing this Agreement, (8) to pay the down payment and any funding amounts received from Lender under this Agreement to the insurance company or general agent (less any commissions where applicable), (9) to hold in trust for Lender or its assigns any payments made or credited to the insured through or to agent/broker directly or indirectly, actually or constructively by the insurance companies and to pay the monies, as well as the unearned commissions to Lender or its assigns upon demand to satisfy the outstanding indebtedness of the insured, (10) all material information concerning the insured and the financed policies necessary for Lender to cancel such policies and receive the unearned premium has been disclosed to Lender, (11) no term or provision of any financed policy requires Lender to notify or get the consent of any third party to effect cancellation of such policy, and (12) to promptly notify Lender in writing if any information on this Agreement becomes inaccurate.

AGENT
 (Name & Place of business)
 ALLIANT INSURANCE SERVICES INC
 100 PINE ST STE 1100
 SAN FRANCISCO, CA 94111-5113
 (415)403-1400 FAX: (415)403-0773

INSURED
 (Name & Residence or business)
 KERN COUNTY HOSPITAL AUTHORITY
 1700 MOUNT VERNON AVE
 BAKERSFIELD, CA 93306-4018
 (661)326-2868
 steven.chandler@kernmedical.com

Account #: _____

SCHEDULE OF POLICIES
(continued)

Quote Number: 14813130

POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY	INSURANCE COMPANY AND GENERAL AGENT	COVERAGE	MINIMUM EARNED PERCENT	POL TERM	PREMIUM
PENDING	03/31/2021	EVANSTON INSURANCE CO AMWINS INS. BROKERAGE OF CA, LLC	EARTHQUAKE	25.00%	12	127,400.00 Tax: 4,140.50

TOTAL: \$329,572.97

CERTIFICATE OF INCUMBENCY

I, MONA A. ALLEN, do hereby certify that I am the duly elected or appointed and acting Secretary or Clerk of the Kern County Hospital Authority (Insured), that I have custody of the records of such entity, and that each individual named below is, and was as of the date each individual affixed his or her signature to the Premium Finance Agreement, between the Insured and IPFS Corporation of California (IPFS) (the Agreement), a duly elected or appointed officer of such entity holding the title or office set forth opposite his or her name below. I further certify that: (i) the signature set opposite each individual's name is true and authentic signature of that individual and (ii) each such individual has (and had on the date each such individual affixed his or her signature to the Agreement) the authority on behalf of the Insured to enter into the Agreement.

Signature

Russell V. Judd
Chief Executive Officer
Kern County Hospital Authority

IN WITNESS WHEREOF, I have duly executed this Incumbency Certificate and affixed the Insured's seal hereto this _____ day of _____, 20____.

Mona A. Allen, Authority Board Coordinator



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

March 17, 2021

Subject: Kern County Hospital Authority Financial Report – January - 2021

Recommended Action: Receive and File

Summary:

COVID-19 Impact on Kern Medical Operations:

The COVID-19 pandemic has impacted Kern Medical's key performance indicators as follows:

- Average Daily Census of 150 for January is 10 more than the January budget of 140 and 9 more than the 141 average over the last three months
- Admissions of 863 for January are equal to the January budget of 863 and are 53 more than the 810 average over the last three months
- Total Surgeries of 354 for January are 132 less than the January budget of 486 and 140 less than the 494 average over the last three months
- Clinic Visits of 16,695 for January are 2,786 more than the January budget of 13,909 and 3,330 more than the 13,365 average over the last three months

Kern Medical has maintained the staffing levels necessary to adequately provide coverage for a surge in pandemic activity if necessary. In addition, Kern Medical is participating in all emergency funding programs available at the county, state, and federal levels to offset lost revenue and increased expenses that may be realized due to the COVID-19 issue.

The following items have budget variances for the month of January 2021:

Patient Revenue:

Gross patient revenue has a favorable budget variance for January, and on a year-to-date basis, mainly because of strong average daily census levels. In addition, there has been an overall increase in revenue cycle efficiency. Gross patient revenue has increased 10% year-to-date compared to prior year.

Indigent Funding Revenue:

Indigent funding has an unfavorable budget variance for the month of January due to a conservative approach of recognizing indigent funding revenue. During each month of fiscal year 2021, Kern Medical will only recognize 95% of the total projected revenue for the Managed Care Rate Range Program, the Medi-Cal Quality Assurance Fee Program, the Physician SPA Program, the Graduate Medical Education (GME) Program, and the AB915 Outpatient Supplemental Funding Program. Kern Medical will recognize 100% of total projected revenue for the Medi-Cal Waiver Programs of Public Hospital Redesign and Incentives in Medi-Cal (PRIME), the Global Payment Program (GPP), and the Whole Person Care Program (WPC). Kern Medical will also recognize 100% of the projected revenue for the Enhanced Payment Program (EPP) and the Quality Incentive Program (QIP). On a year-to-date basis there is a favorable budget variance for indigent funding because of the receipt and recognition of \$3.570 million from the Low Income Health Plan (LIHP). Settlements were reached for prior years' LIHP activity that were not previously accrued for on Kern Medical's balance sheet.

Other Operating Revenue:

Other operating revenue has a favorable budget variance for January because of revenue derived from the new drive-through COVID-19 testing facility.

Other Non-Operating Revenue:

COVID-19 related funding is budgeted evenly throughout FY 2021 as other non-operating revenue; however, COVID-19 funding is not received consistently on a monthly basis. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Salaries Expense:

Salaries expense is over budget for the month in part because of an increase in premium pay and crisis pay that is now offered to nurses to encourage working extra hours as needed to serve increases in patient volume. On a year-to-date basis, salaries are over budget due in large part to higher than average expenses for registered nurses (RNs) and physicians. RN salaries have increased 6% over prior year and physician salaries have increased 8% over prior year. There has also been an increase in FTEs in the Behavioral Health unit for additional sitters needed for an increase in behavioral health patients.

Benefits Expense:

Benefits expense is over budget for January due to higher than average costs for group insurance, retirement, and pension obligations. These three line items also drive the unfavorable year-to-date budget variance. However, these items account for a smaller percentage of total gross salaries this year than they did in prior year.

Medical Fees:

Medical fees were over budget for the month, primarily due to higher than average fees paid to Total Renal for dialysis related services. On a year-to-date basis, medical fees are over budget due to true-up entries to account for under accruals for expenses in prior months.

Other Professional Fees:

Kern Medical operated at the budgeted dollar amount for other professional fees in January. On a year-to-date basis, there is a favorable budget variance because of the reversal of an expense accrual for Allscripts services. The Information Systems department determined that the expense was over accrued in prior months. In addition, Kern Medical received credits from Change Healthcare for overpayments made to the vendor in prior months.

Supplies Expense:

Supplies expense are under budget for the month primarily because of lower than expected pharmaceutical expense. In addition, current month expense is lower due to a 25% decrease in surgery activity in January compared to the year-to-date trend. The favorable year-to-date variance is also due to lower than expected pharmaceutical expense this year.

Purchased Services:

Purchased services expenses are under budget for January due to over accruals for expenses in the prior month for Health Advocates financial counselors, HFRI collection agency, and Hall Ambulance. On a year-to-date basis, purchased services are under budget because of lower than average expenses for out-of-network contracted patient care services provided by other healthcare facilities.

Other Expenses:

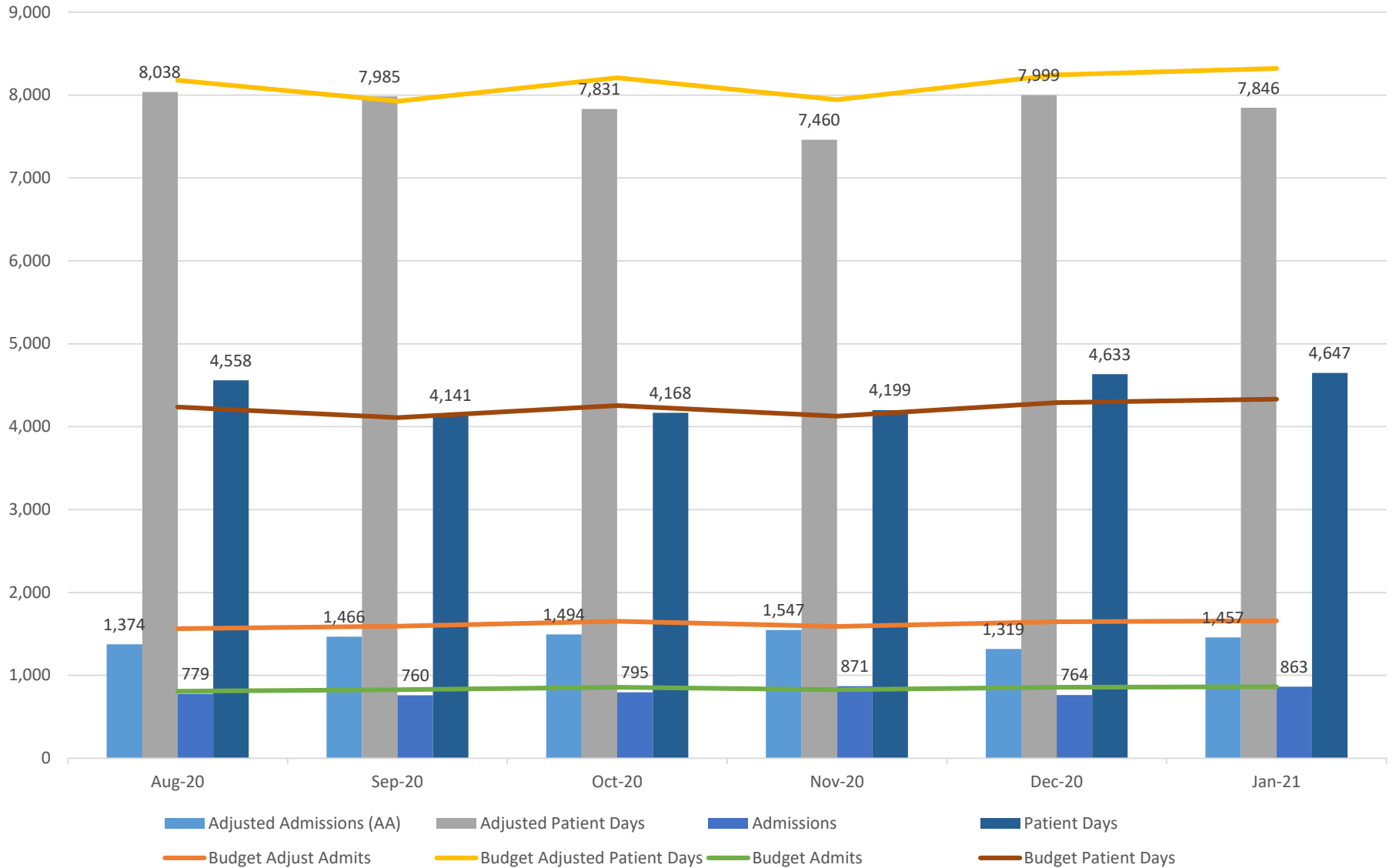
Other expenses are under budget for the month because of lower than average repairs and maintenance expenses. Higher than average repairs and maintenance expenses and high utility expenses during the early months of the fiscal year are the reasons for the unfavorable year-to-date budget variance for this line item.



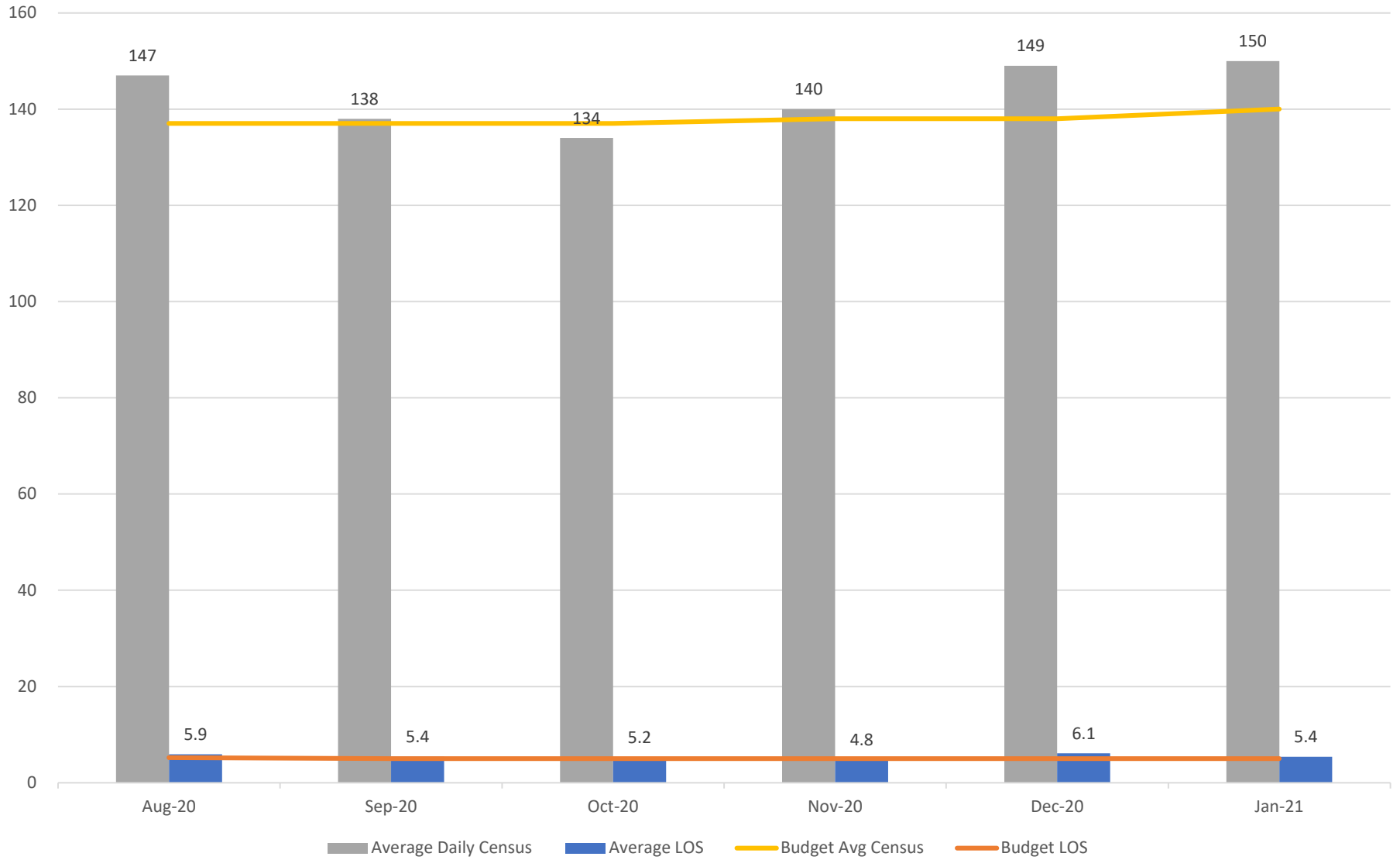
**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – JANUARY 2021**

March 2021

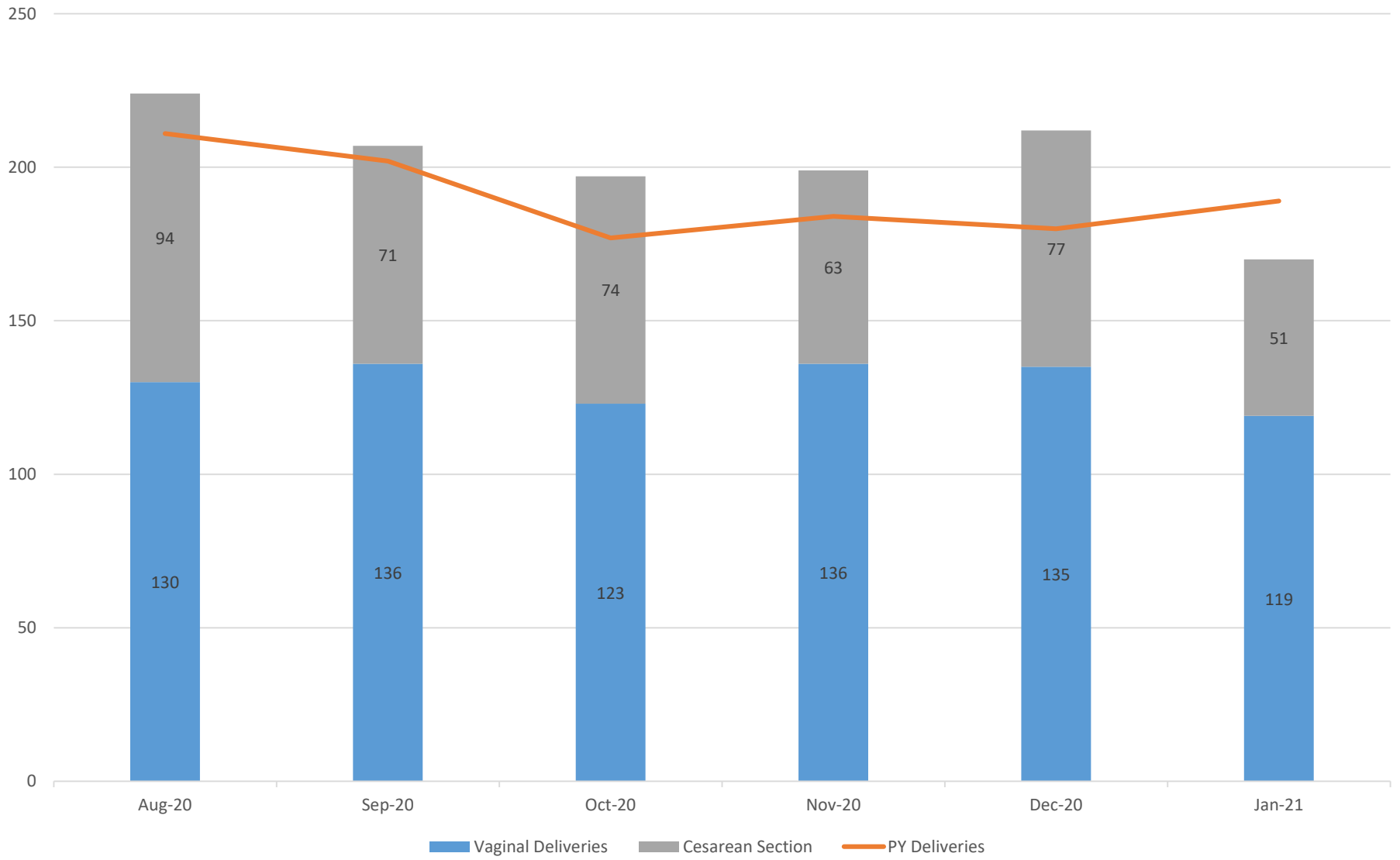
Hospital Volumes



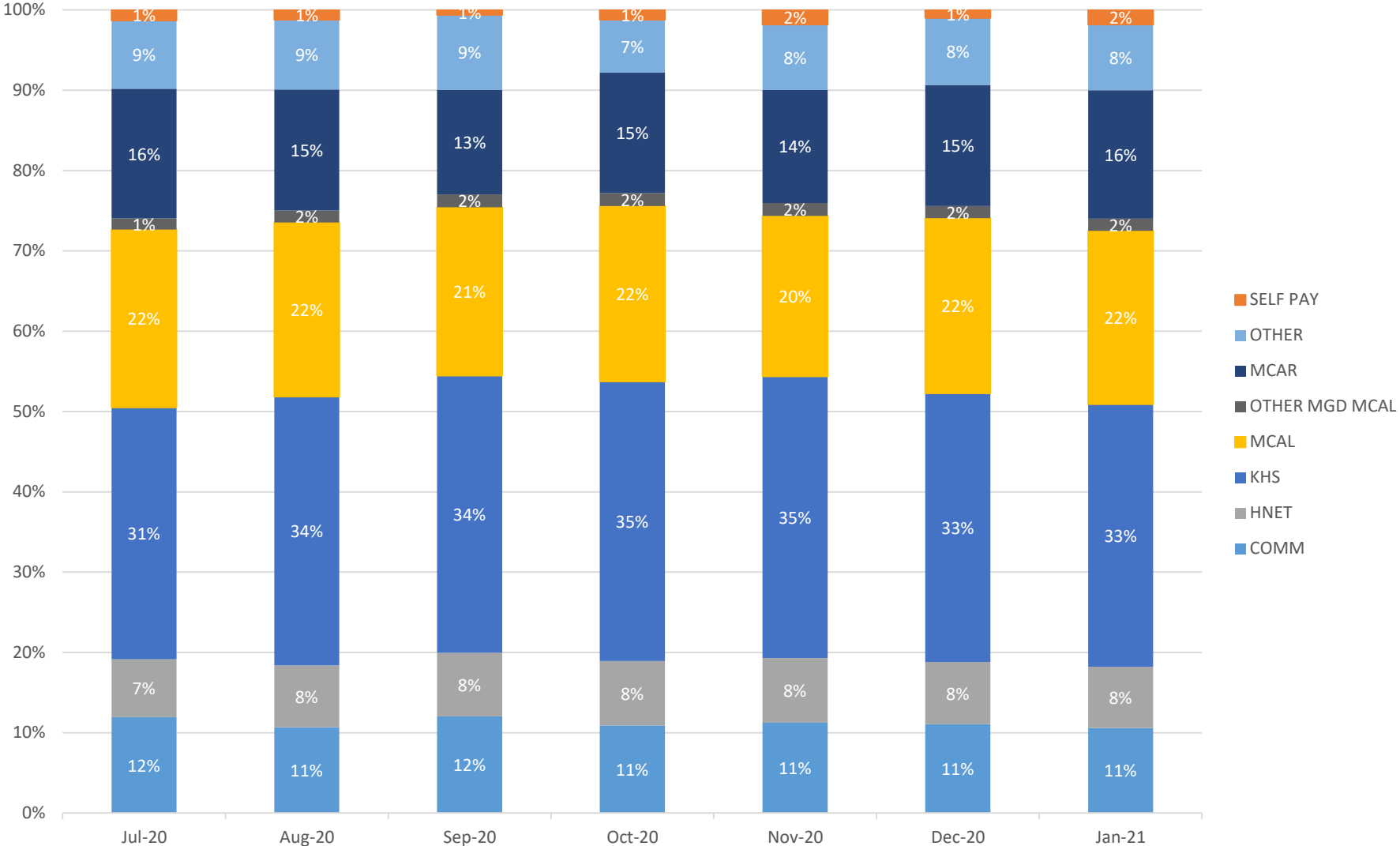
Census & ALOS



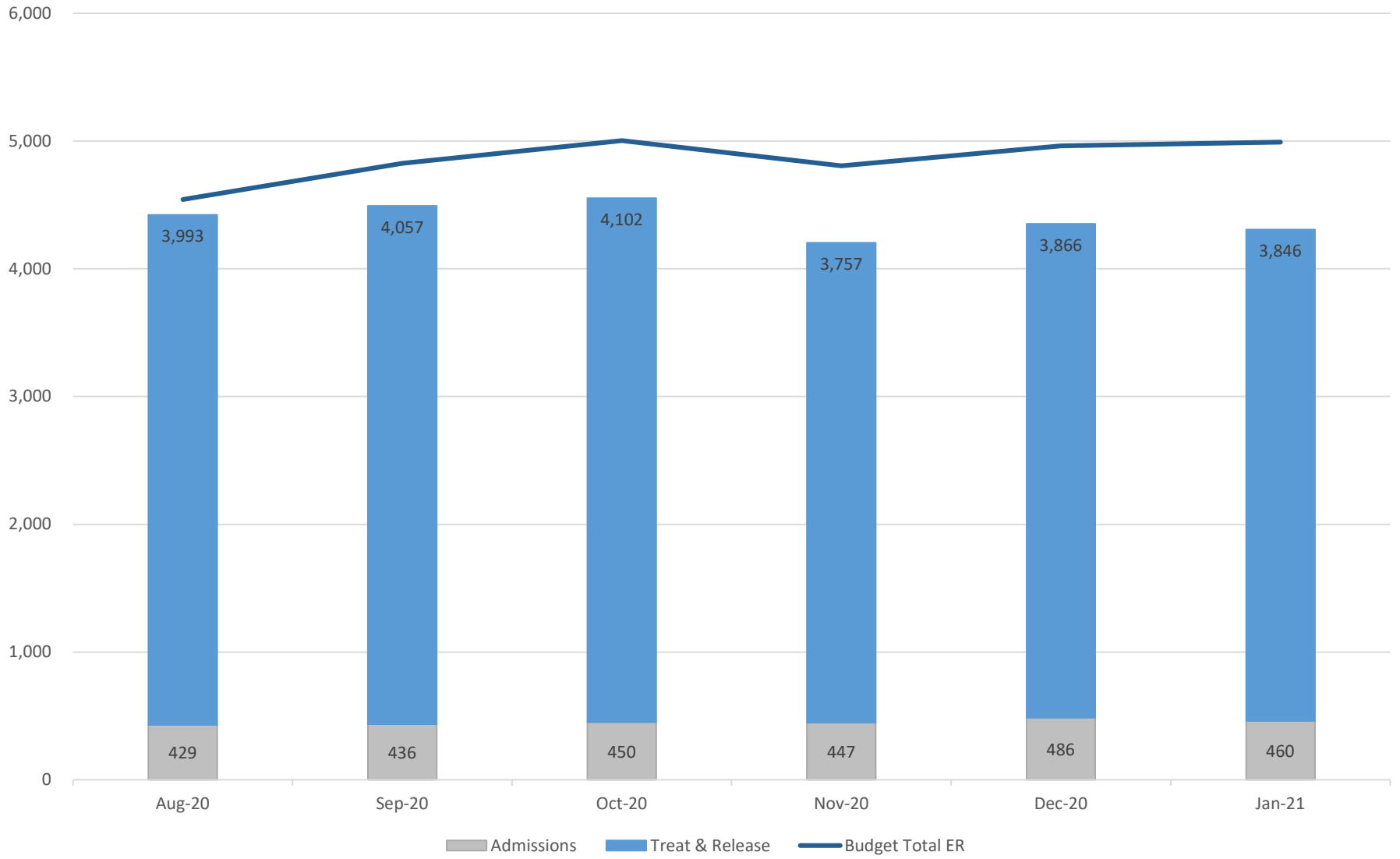
Deliveries



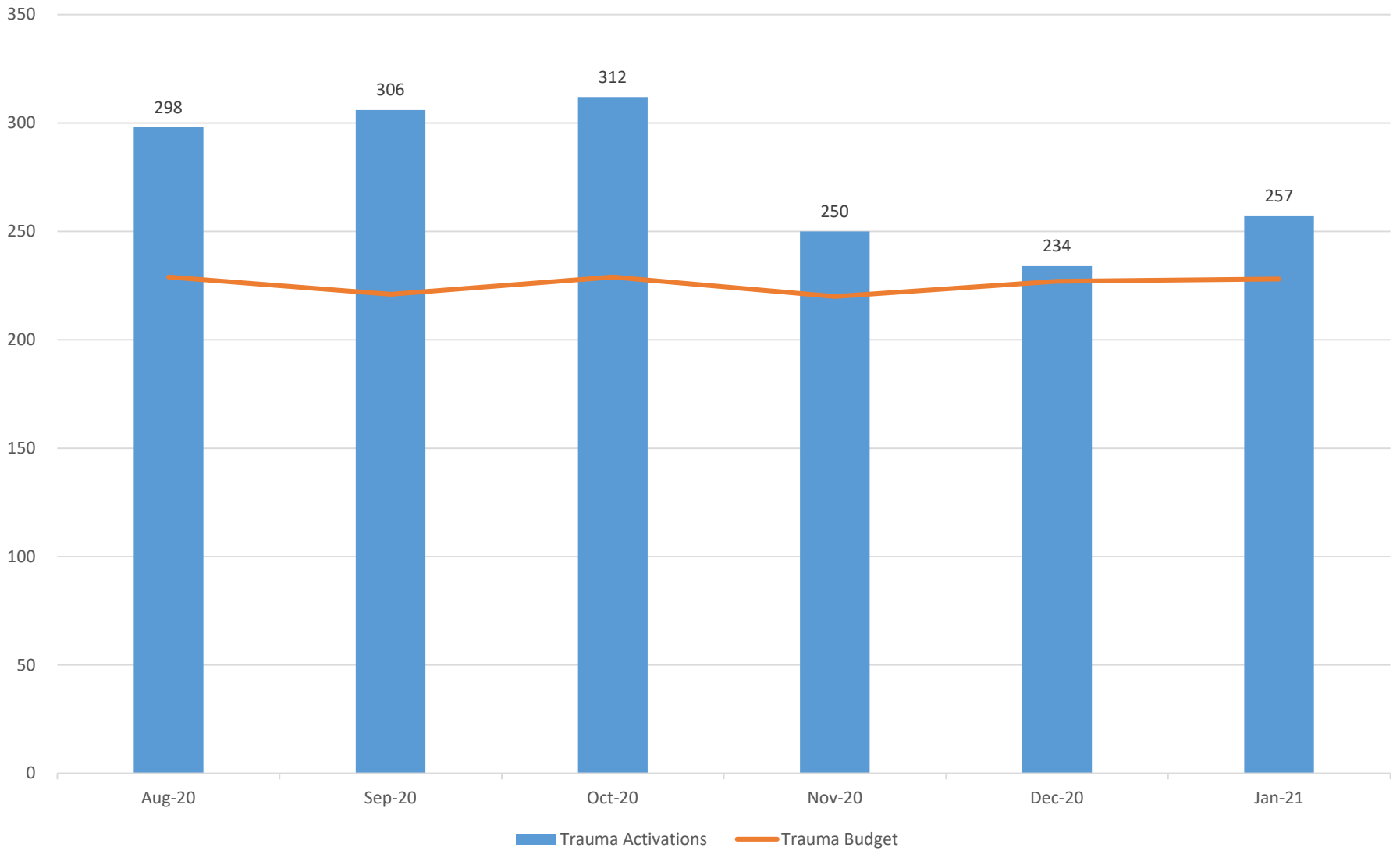
PAYER MIX



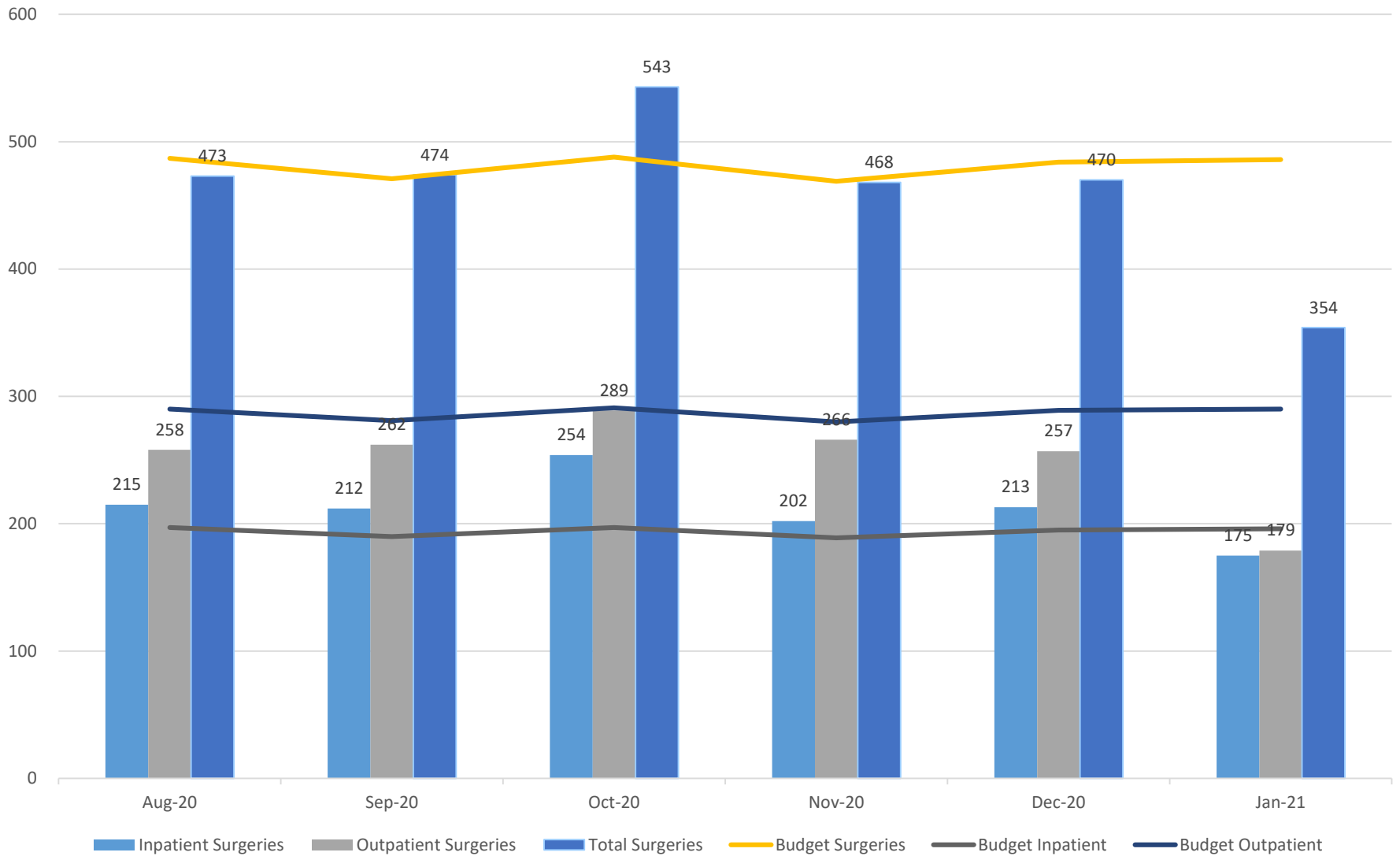
Emergency Room Volume



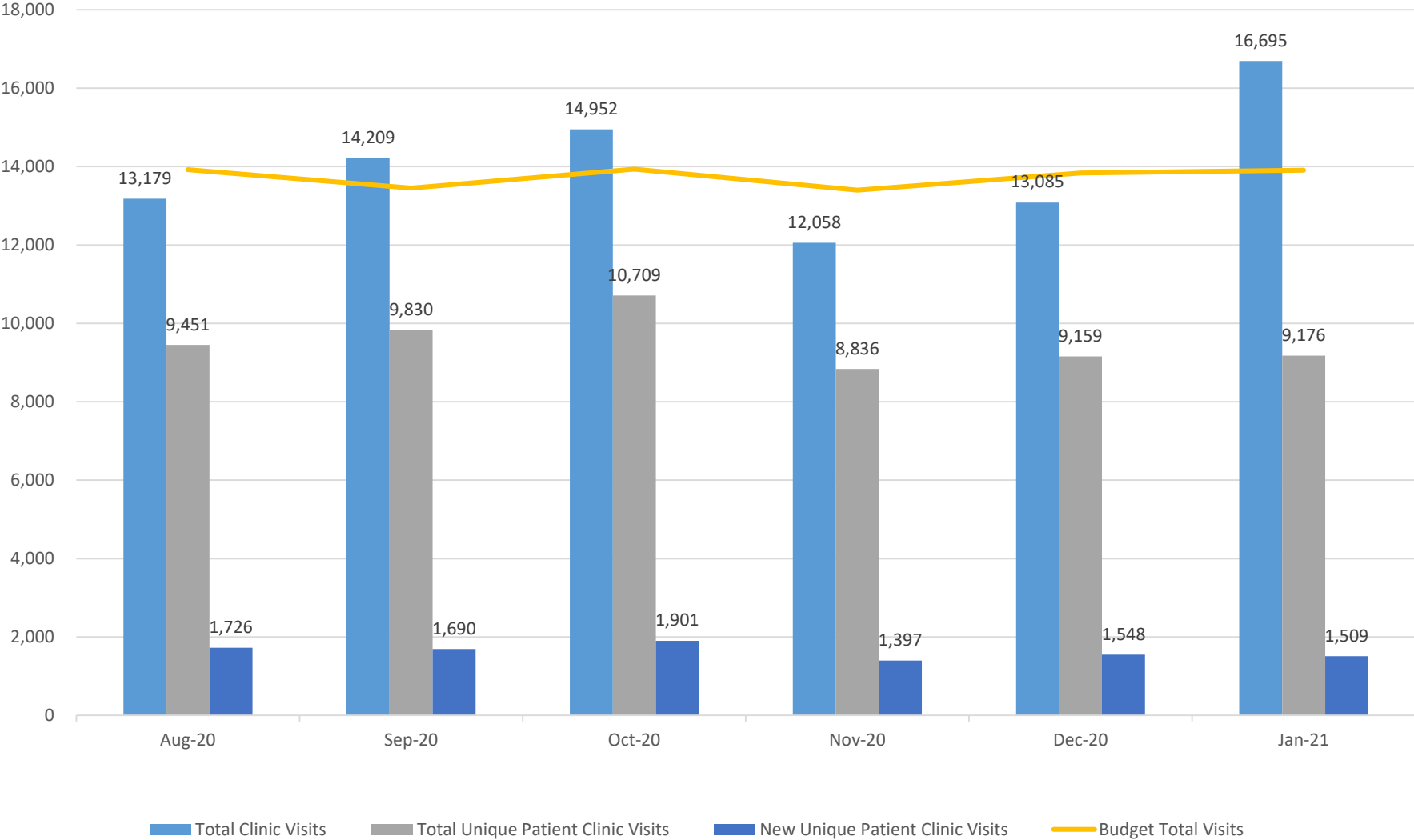
Trauma Activations



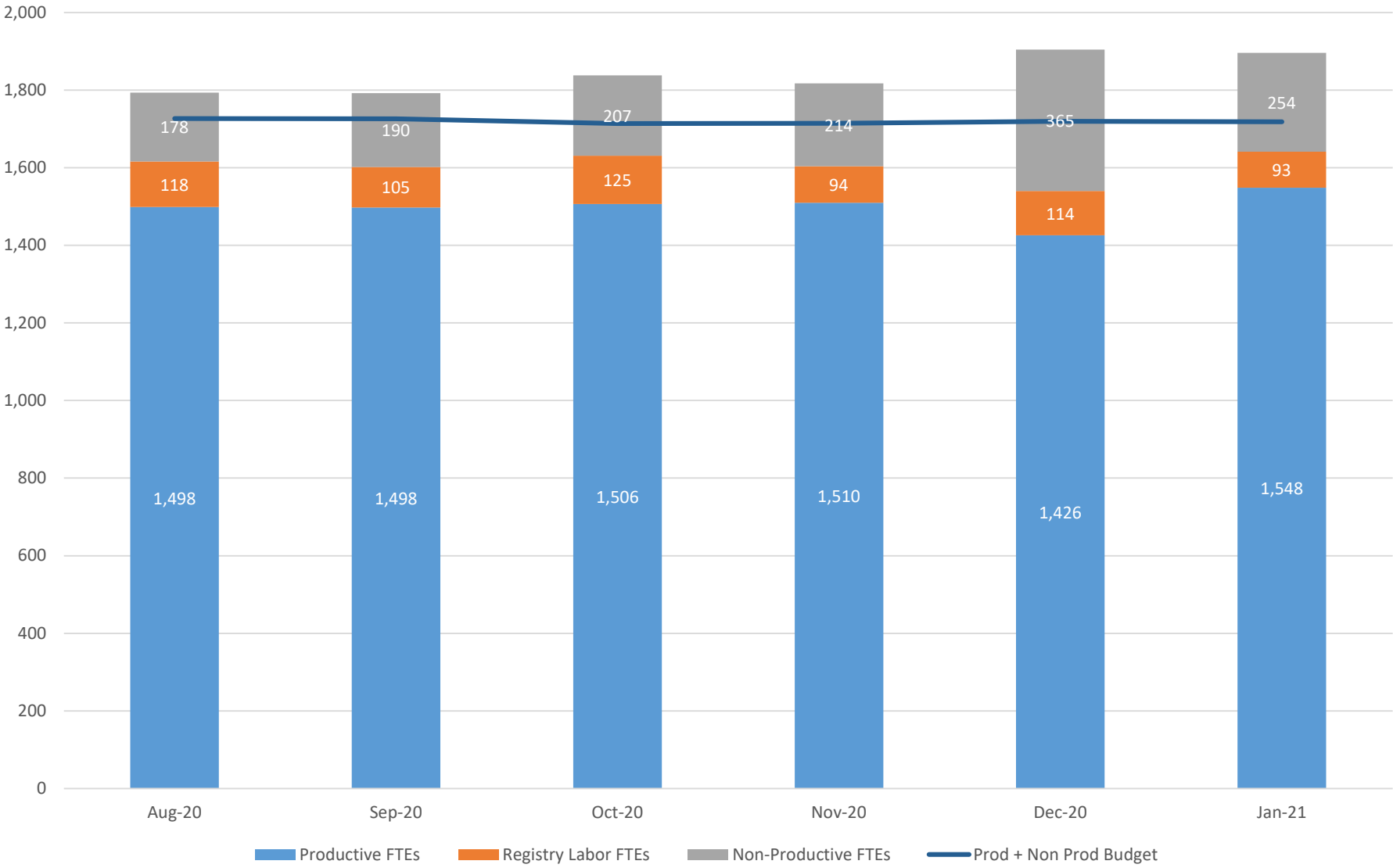
Surgical Volume



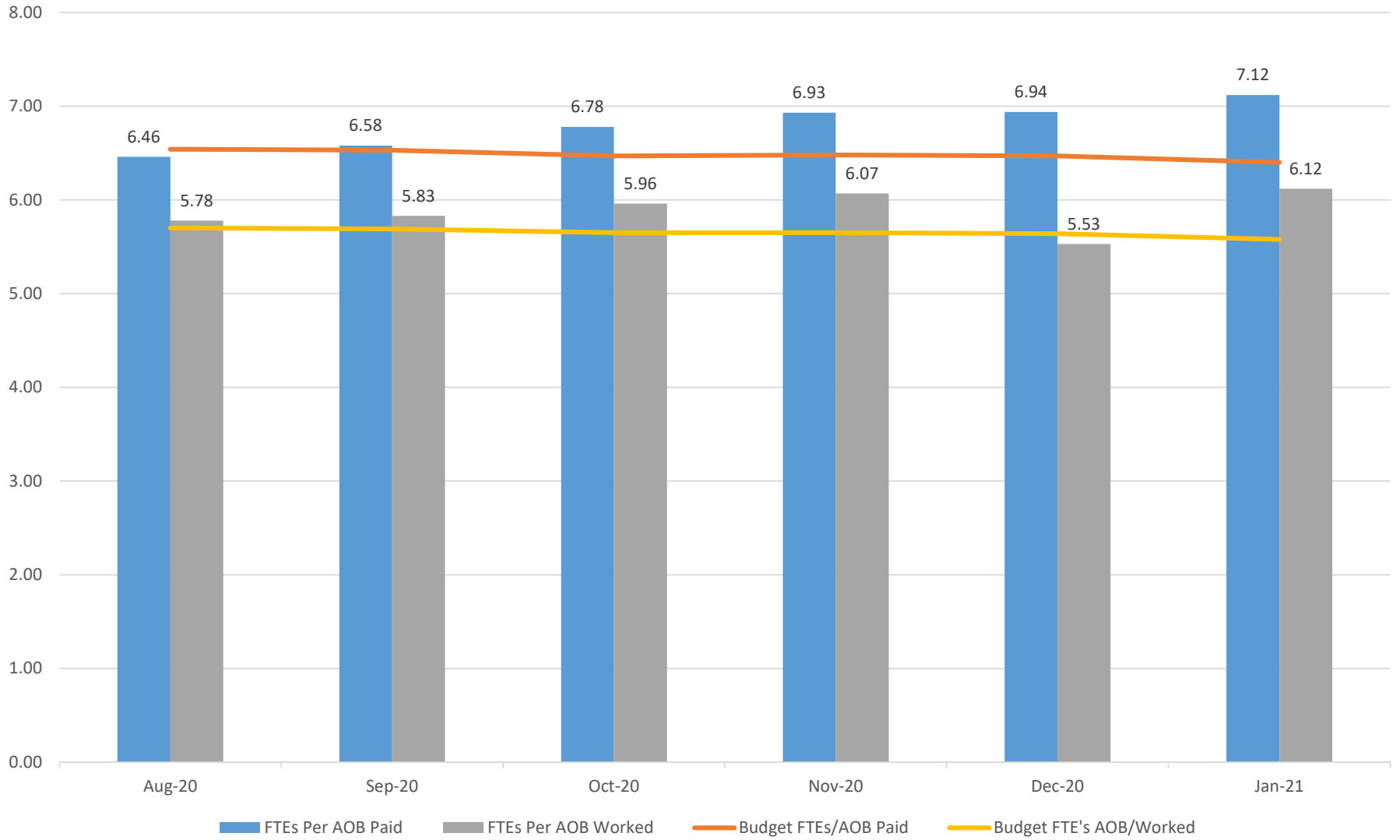
Clinic Visits



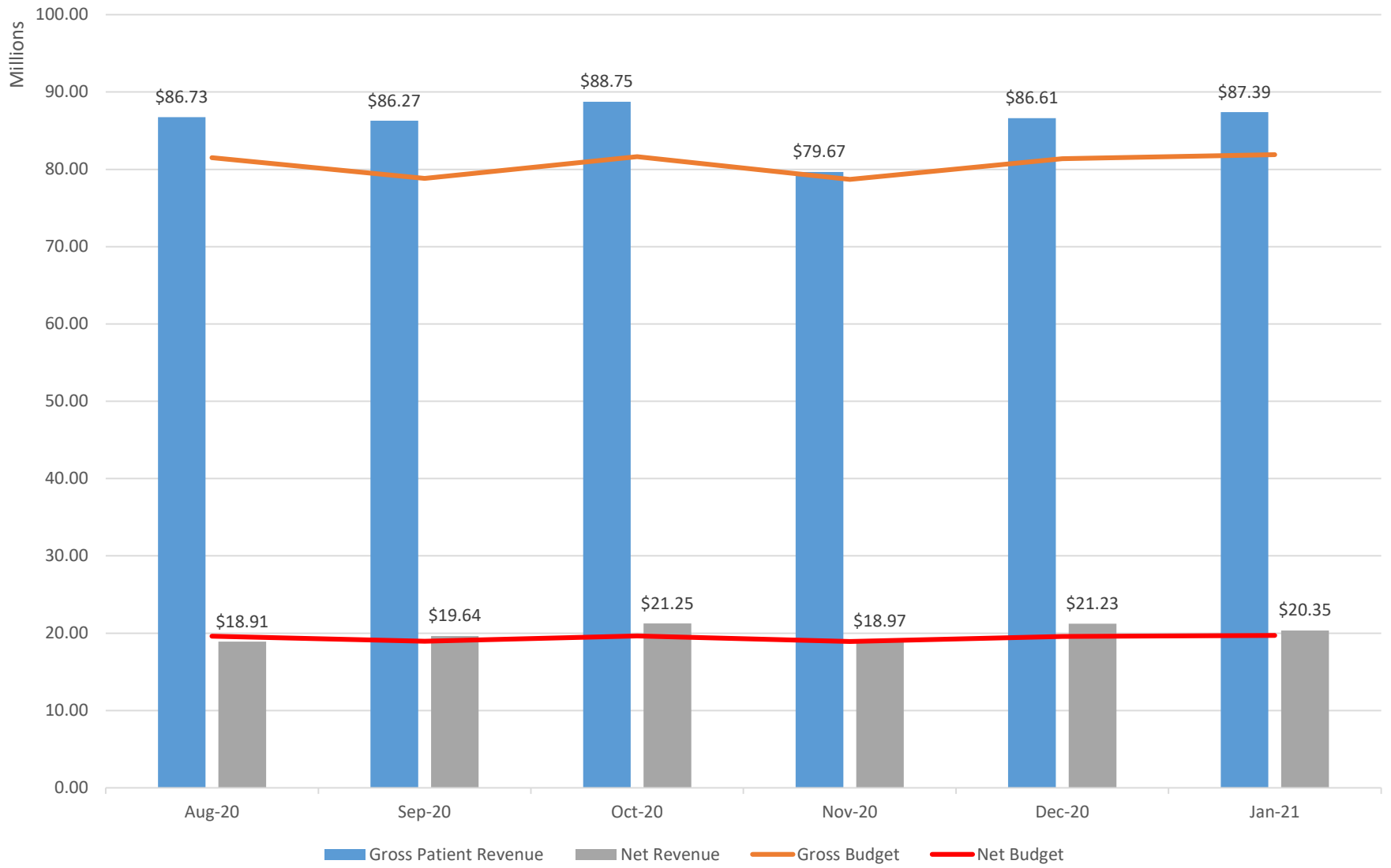
Productivity



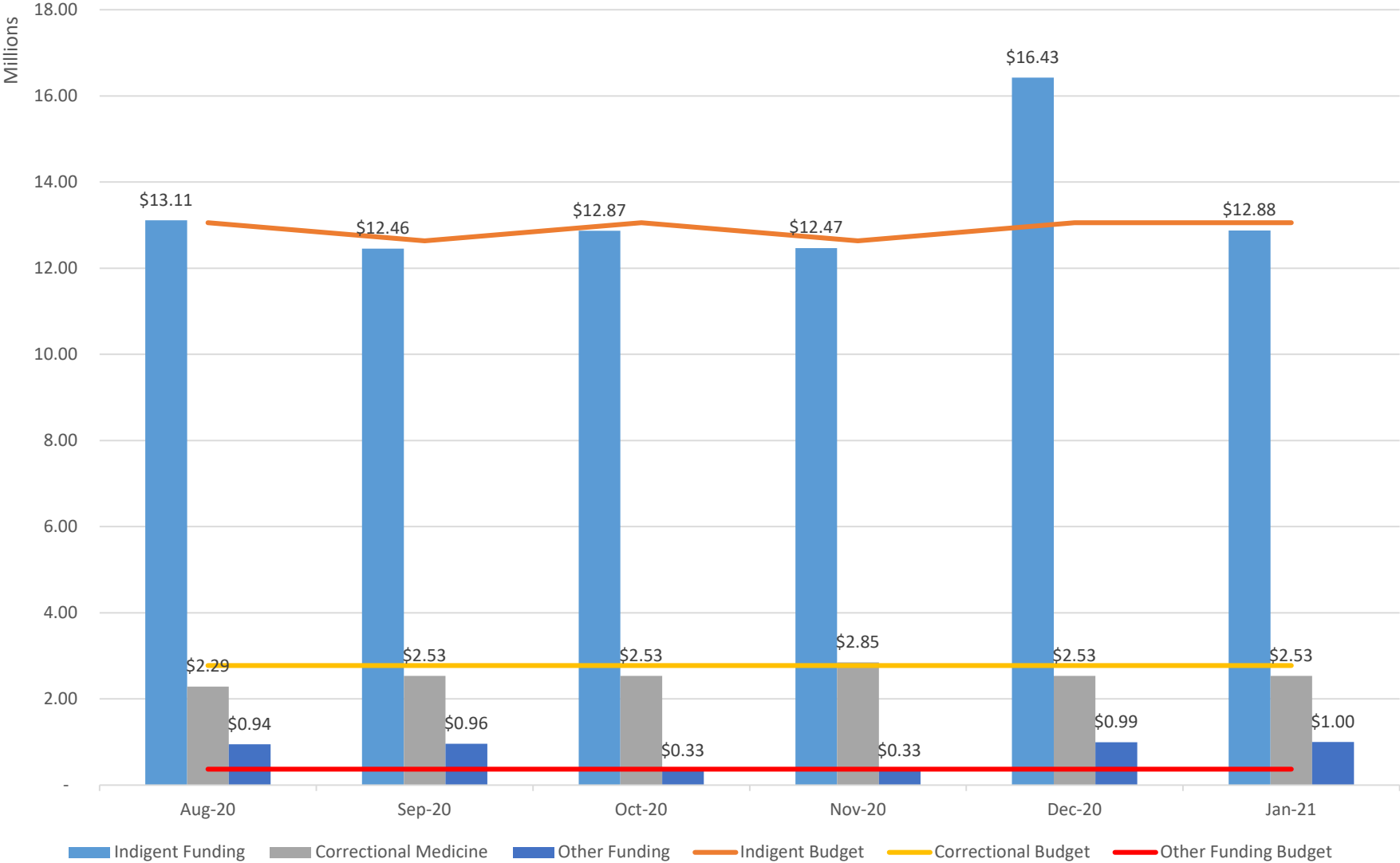
Labor Metrics



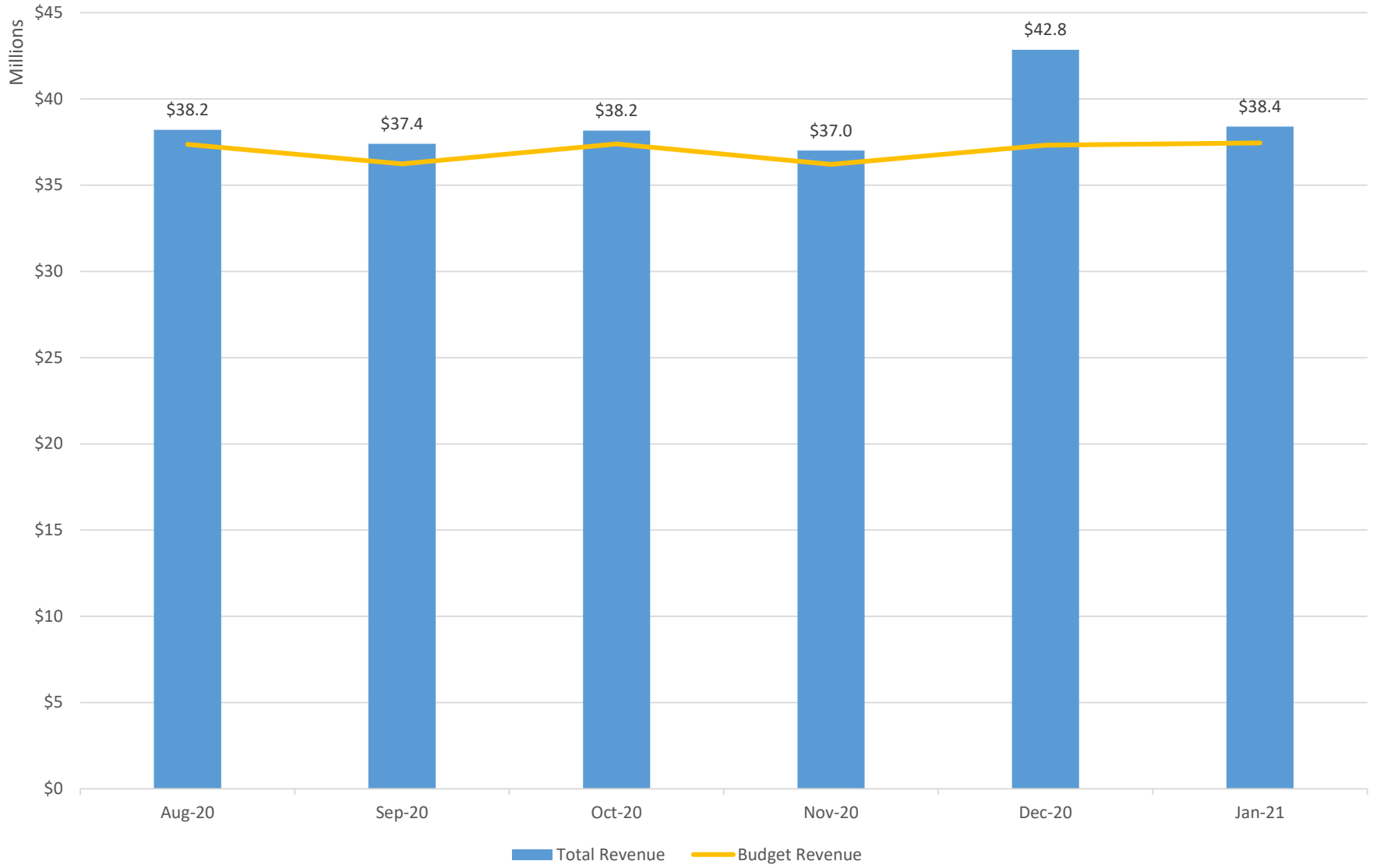
Patient Revenue



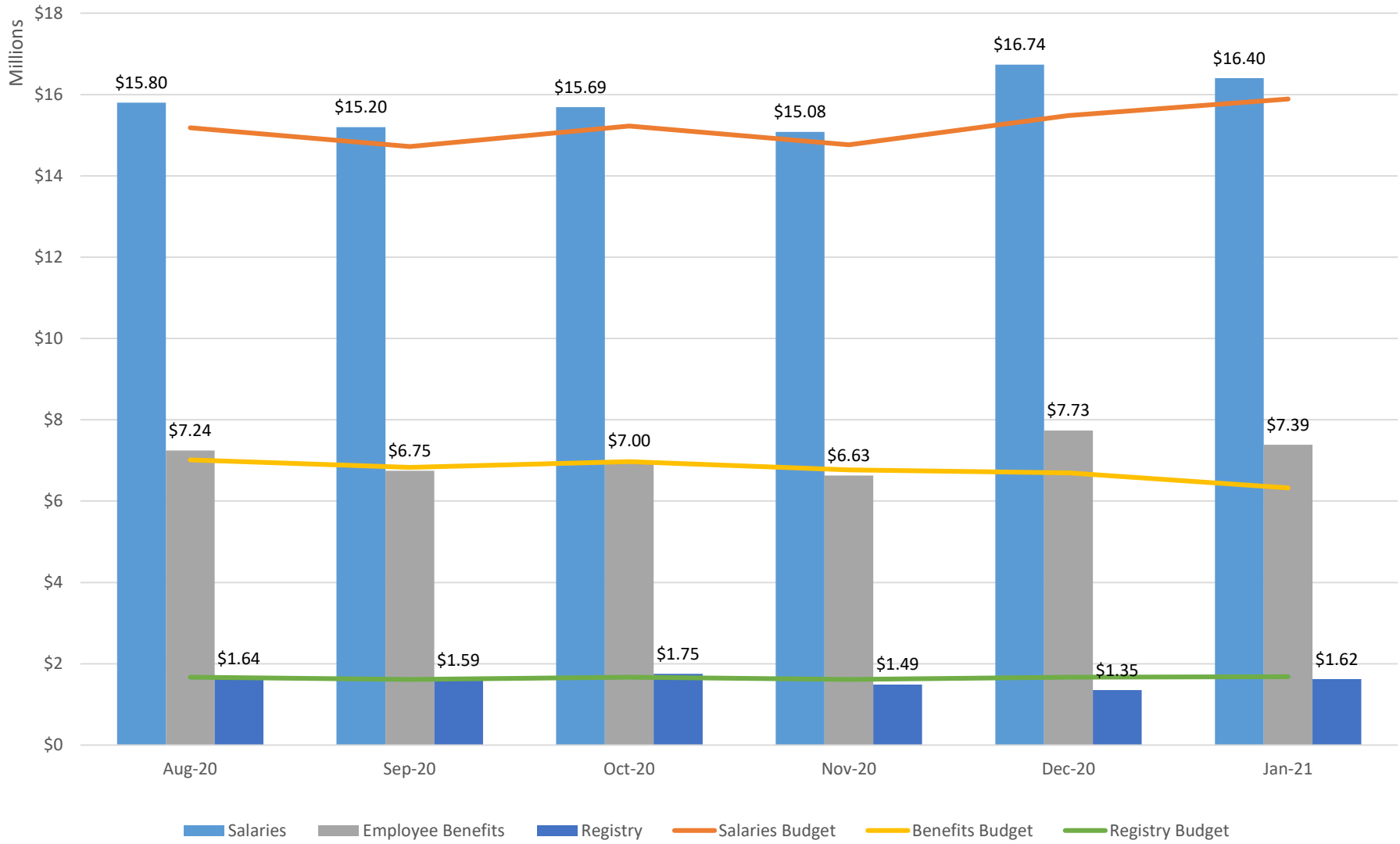
Indigent & Correctional Revenue



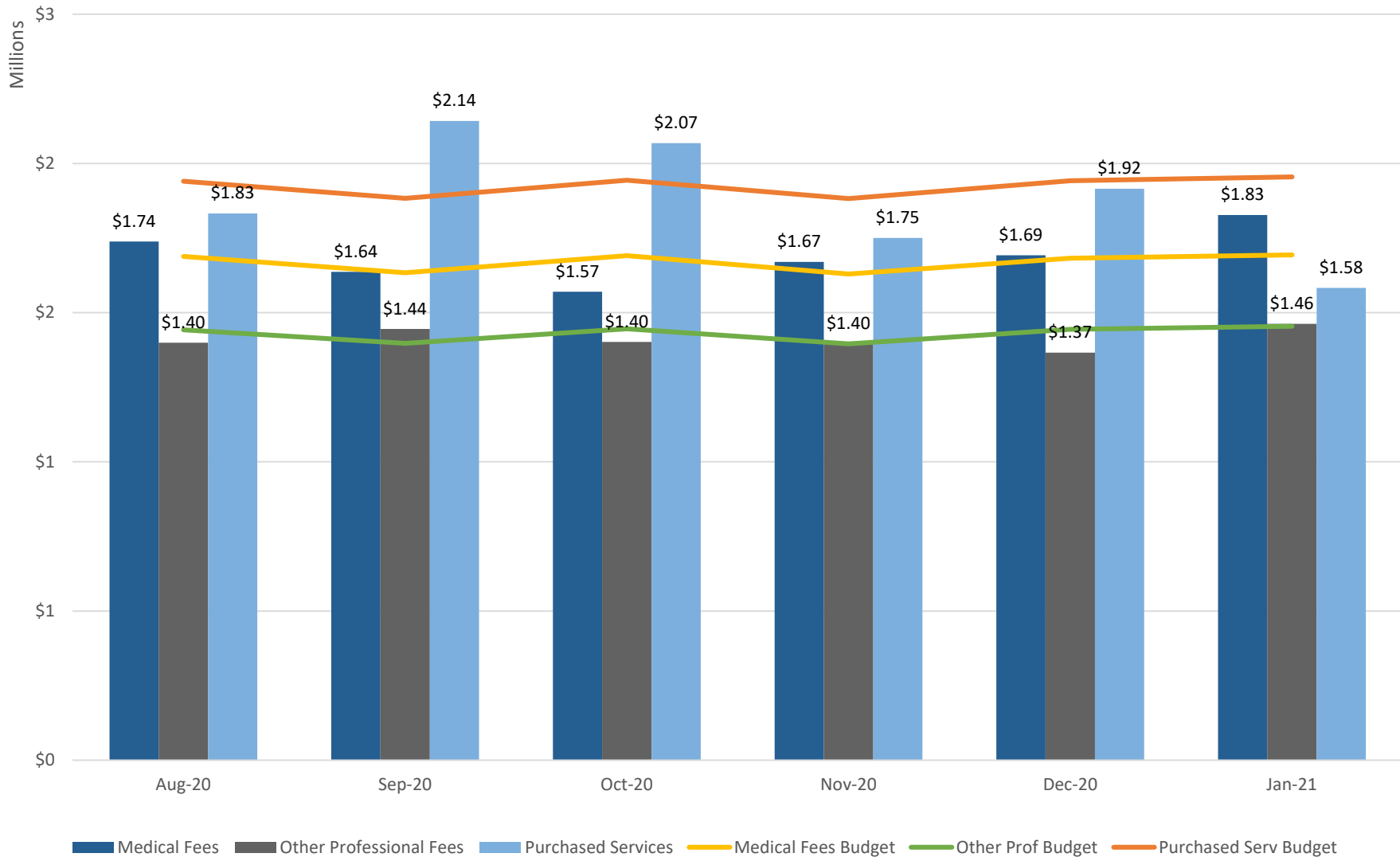
Total Revenue



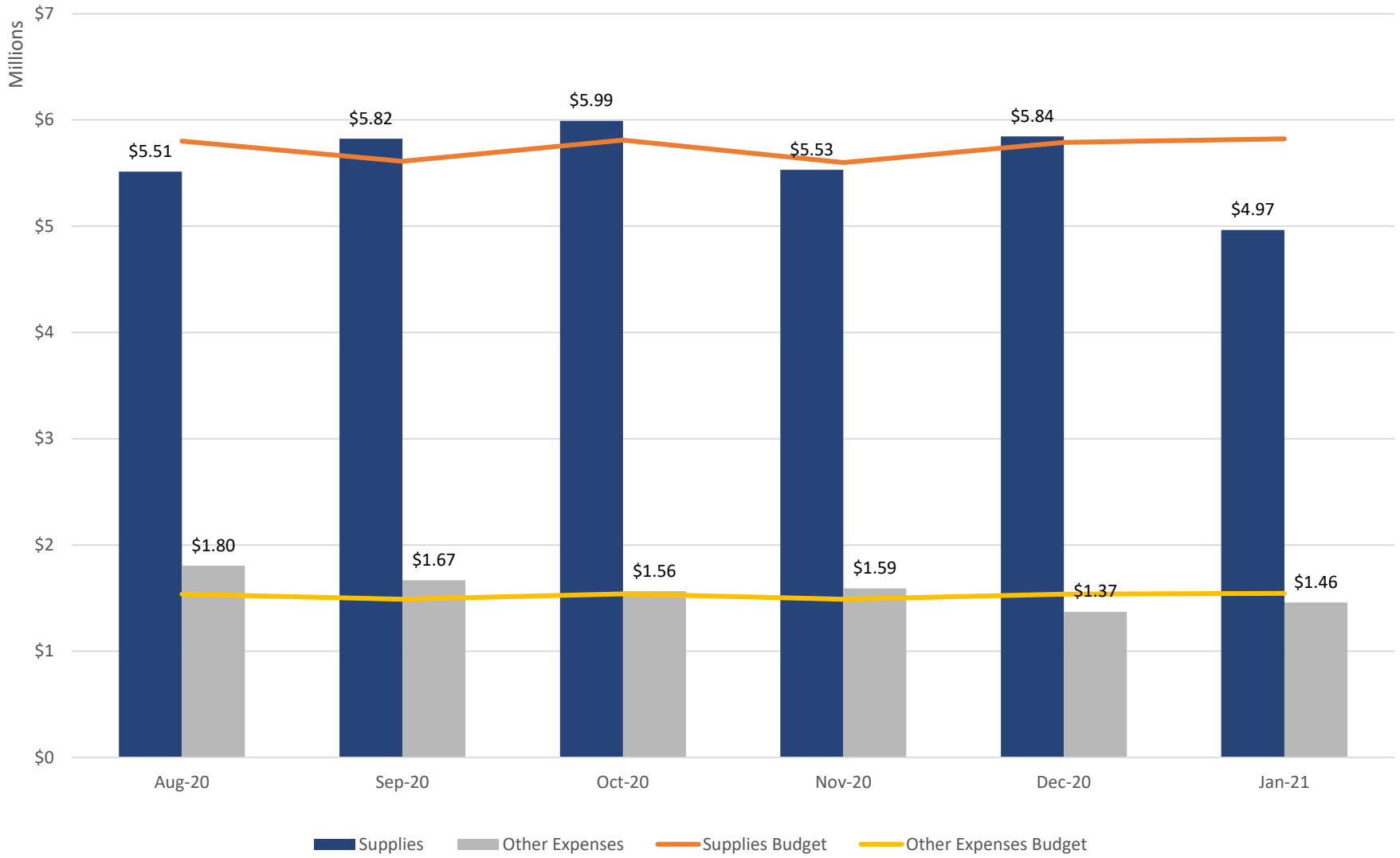
Salaries & Benefits



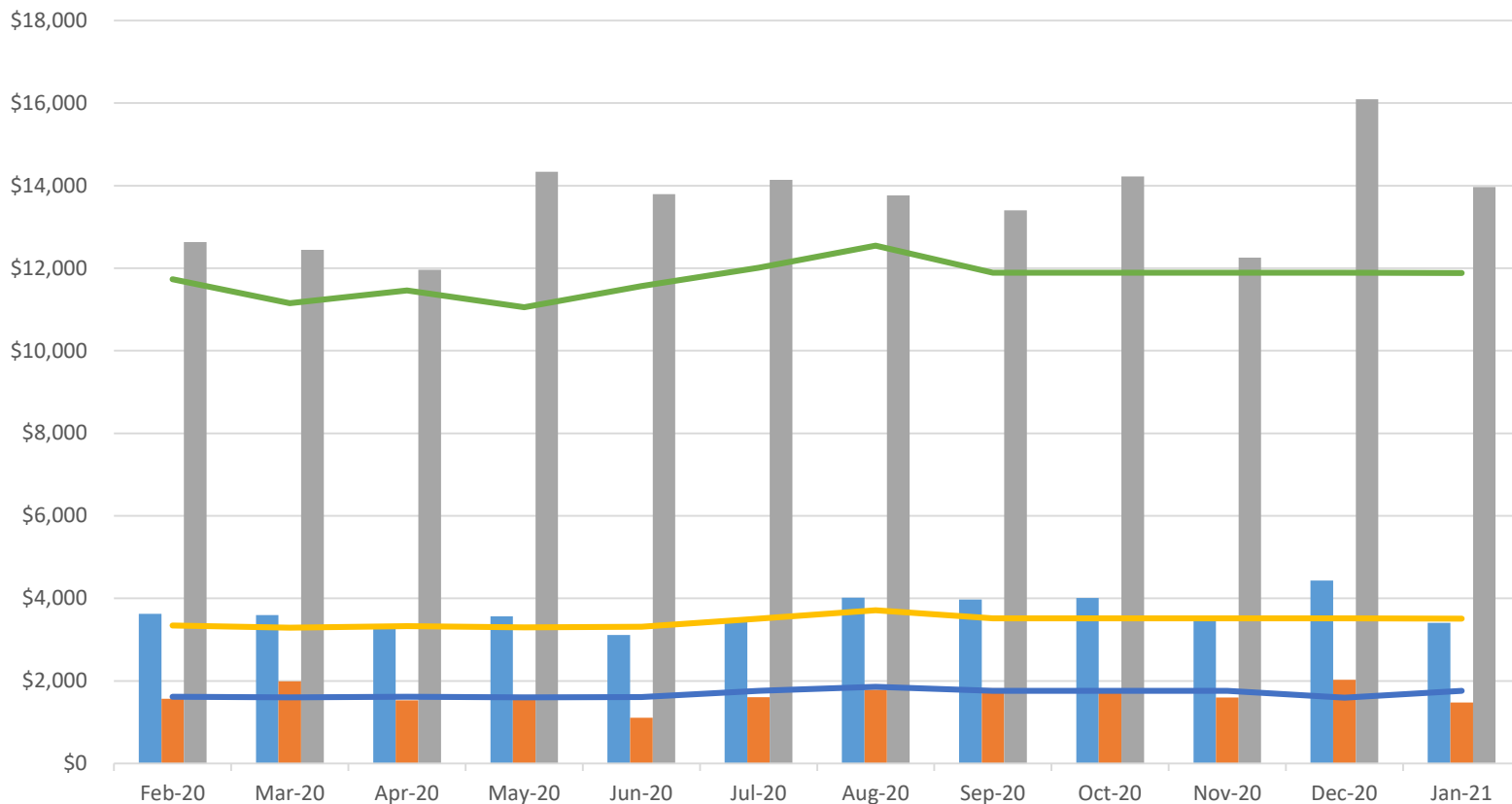
Purchased Services, Medical, & Other Prof Fees



Expenses

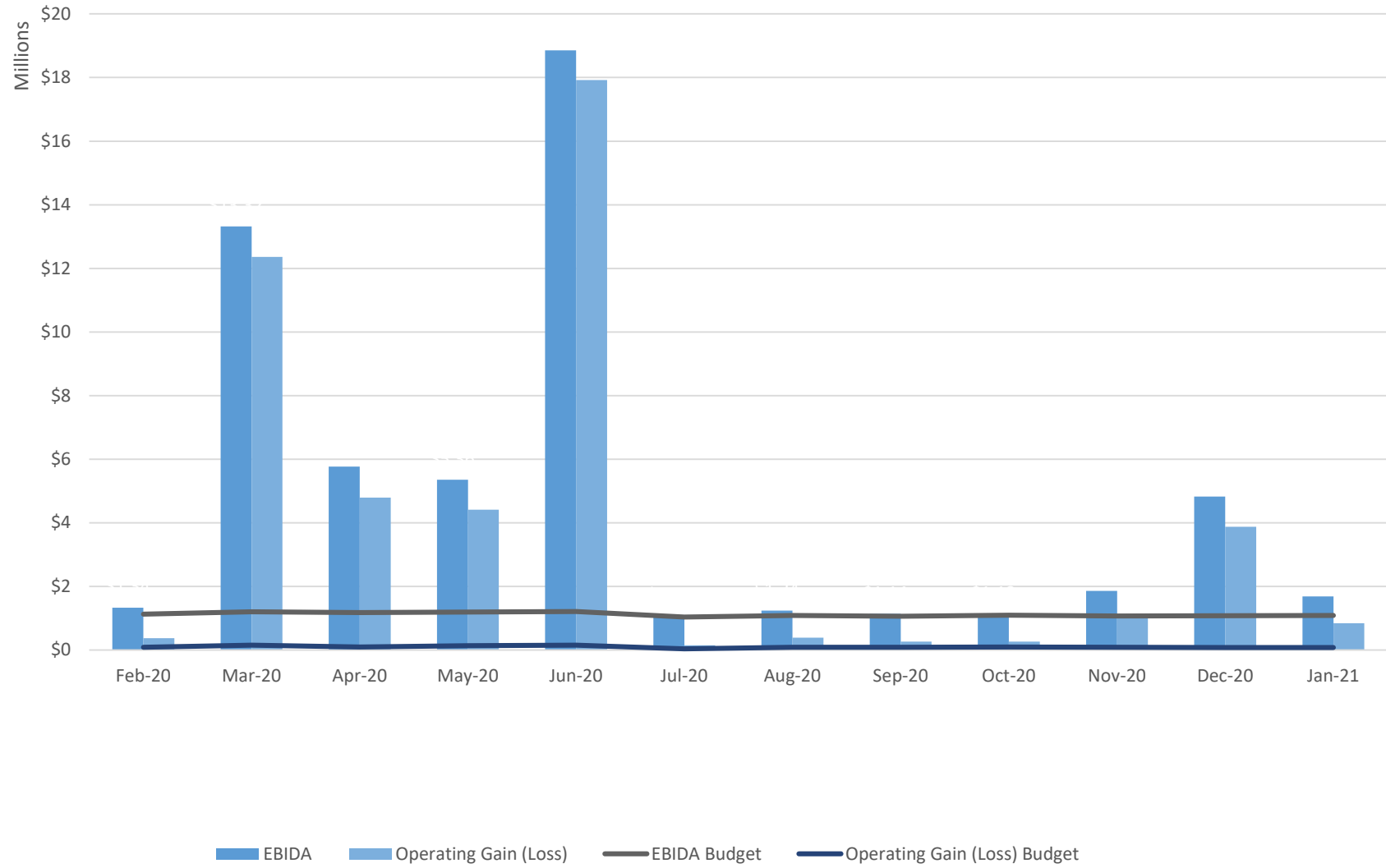


Operating Metrics

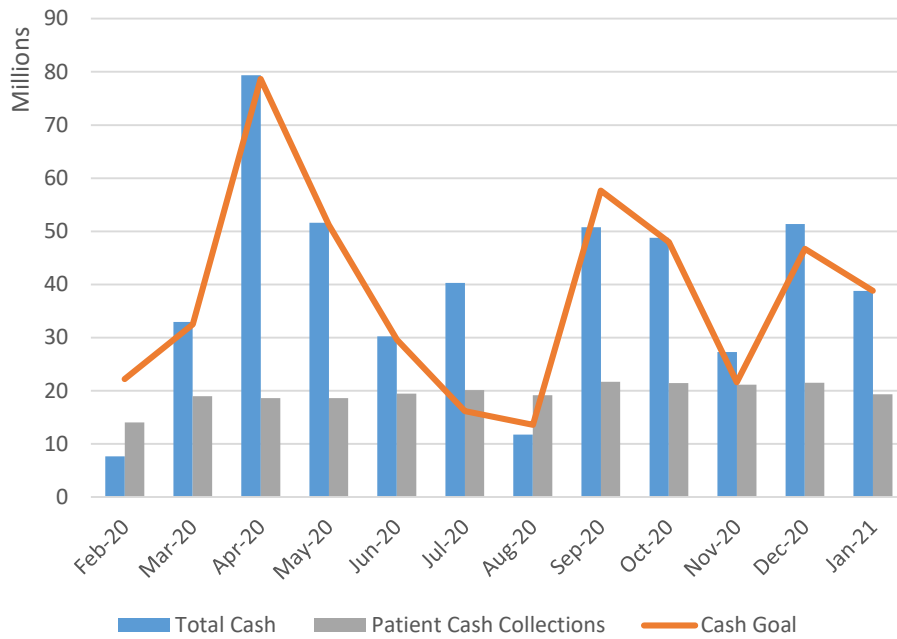


	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21
Supply Expense per AA	\$3,627	\$3,592	\$3,365	\$3,568	\$3,114	\$3,436	\$4,014	\$3,973	\$4,011	\$3,574	\$4,431	\$3,408
Pharm Cost per AA	\$1,569	\$1,989	\$1,530	\$1,658	\$1,110	\$1,604	\$1,787	\$1,823	\$1,735	\$1,597	\$2,028	\$1,481
Net Revenue Per AA	\$12,632	\$12,444	\$11,963	\$14,333	\$13,794	\$14,139	\$13,765	\$13,403	\$14,225	\$12,256	\$16,093	\$13,968
Budget Supp/AA	\$3,343	\$3,293	\$3,330	\$3,298	\$3,314	\$3,513	\$3,711	\$3,520	\$3,517	\$3,519	\$3,516	\$3,511
Budget Pharm/AA	\$1,614	\$1,603	\$1,615	\$1,605	\$1,612	\$1,760	\$1,859	\$1,763	\$1,762	\$1,762	\$1,596	\$1,759
Budget Net Rev/AA	\$11,730	\$11,153	\$11,464	\$11,052	\$11,568	\$12,011	\$12,543	\$11,892	\$11,891	\$11,893	\$11,893	\$11,882

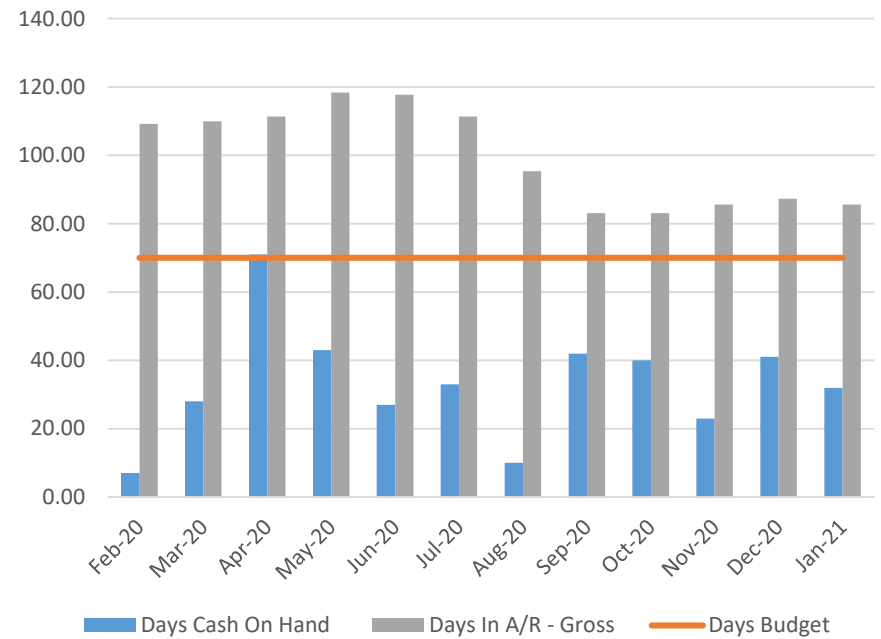
EBIDA 2021 FYTD



Cash 2021 FYTD



AR Days 2021 FYTD



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
January 31, 2021

	NOVEMBER	DECEMBER	JANUARY	BUDGET JANUARY	VARIANCE POS (NEG)	PY JANUARY
Gross Patient Revenue	\$ 79,669,458	\$ 86,608,737	\$ 87,386,015	\$ 81,896,646	7%	\$ 80,827,948
Contractual Deductions	(60,703,161)	(65,381,838)	(67,032,899)	(62,193,347)	8%	(64,478,388)
Net Revenue	18,966,297	21,226,899	20,353,116	19,703,299	3.3%	16,349,560
Indigent Funding	12,470,051	16,428,115	12,876,248	13,055,802	(1%)	12,609,681
Correctional Medicine	2,846,885	2,531,665	2,531,665	2,777,068	(9%)	5,723,874
County Contribution	285,211	285,211	285,211	285,211	0%	285,211
Incentive Funding	41,667	707,727	716,247	83,333	759%	212,040
Net Patient Revenue	34,610,111	41,179,616	36,762,487	35,904,713	2.4%	35,180,366
Other Operating Revenue	2,211,409	1,646,558	1,623,962	1,268,658	28%	1,766,511
Other Non-Operating Revenue	181,145	16,001	12,372	279,021	(96%)	14,339
Total Revenue	37,002,666	42,842,176	38,398,821	37,452,391	3%	36,947,591
Expenses						
Salaries	15,083,407	16,736,777	16,401,152	15,888,929	3%	15,451,068
Employee Benefits	6,629,351	7,734,603	7,387,764	6,325,775	17%	7,322,124
Registry	1,490,362	1,352,040	1,621,967	1,682,278	(4%)	1,553,723
Medical Fees	1,670,322	1,691,974	1,827,050	1,693,284	8%	1,623,380
Other Professional Fees	1,396,417	1,365,864	1,462,804	1,454,212	0.6%	1,412,068
Supplies	5,530,293	5,844,300	4,965,542	5,822,690	(15%)	5,118,128
Purchased Services	1,750,279	1,915,140	1,582,805	1,955,097	(19%)	1,583,612
Other Expenses	1,592,254	1,371,316	1,459,893	1,544,652	(5%)	1,391,420
Operating Expenses	35,142,685	38,012,013	36,708,977	36,366,917	1%	35,455,522
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,859,981	\$ 4,830,163	\$ 1,689,844	\$ 1,085,474	56%	\$ 1,492,069
EBIDA Margin	5%	11%	4%	3%	52%	4%
Interest	35,643	224,105	124,986	233,654	(47%)	219,497
Depreciation	455,582	471,695	458,972	507,965	(10%)	481,227
Amortization	256,257	256,257	256,257	262,602	(2%)	256,825
Total Expenses	35,890,168	38,964,071	37,549,193	37,371,137	0%	36,413,070
Operating Gain (Loss)	\$ 1,112,498	\$ 3,878,104	\$ 849,628	\$ 81,254	946%	\$ 534,521
Operating Margin	3.0%	9.1%	2.2%	0.22%	920%	1.45%

KERN MEDICAL
Year-to-Date: Revenue & Expense
January 31, 2021

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
Gross Patient Revenue	\$ 601,013,886	\$ 565,136,722	6%	\$ 547,146,768	10%
Contractual Deductions	(459,947,222)	(429,187,430)	7%	(410,819,759)	12%
Net Revenue	141,066,664	135,949,293	4%	136,327,009	
Indigent Funding	92,845,030	90,548,305	3%	85,868,054	8%
Correctional Medicine	18,036,836	19,439,476	(7%)	20,886,282	(13.6%)
County Contribution	1,996,516	1,996,476	0%	1,996,476	0.0%
Incentive Funding	3,479,827	583,333	497%	1,484,280	134%
Net Patient Revenue	257,424,873	248,516,883	4%	246,562,101	4%
Other Operating Revenue	10,163,390	8,798,859	16%	8,750,153	16%
Other Non-Operating Revenue	2,286,360	1,948,409	17%	73,215	3,023%
Total Revenue	269,874,623	259,264,151	4%	254,837,326	6%
Expenses					
Salaries	110,780,044	106,570,997	4%	102,956,321	8%
Employee Benefits	50,251,971	47,397,826	6%	47,011,545	7%
Registry	11,085,987	11,583,896	(4%)	11,832,436	(6.3%)
Medical Fees	12,038,468	11,699,884	3%	11,834,832	2%
Other Professional Fees	9,661,624	10,014,991	(4%)	10,422,558	(7%)
Supplies	38,703,751	40,212,275	(4%)	37,981,471	1.9%
Purchased Services	13,188,563	13,480,414	(2%)	13,632,833	(3%)
Other Expenses	11,214,276	10,670,750	5%	10,667,193	5%
Operating Expenses	256,924,684	251,631,032	2%	246,339,190	4%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 12,949,938	\$ 7,633,119	70%	\$ 8,498,136	52%
EBIDA Margin	5%	3%	63%	3%	44%
Interest	953,462	1,620,501	(41%)	1,617,853	(41%)
Depreciation	3,283,583	3,529,261	(7%)	3,473,683	(5%)
Amortization	1,793,802	1,805,327	(0.6%)	1,081,714	66%
Total Expenses	262,955,531	258,586,121	2%	252,512,440	4%
Operating Gain (Loss)	\$ 6,919,091	\$ 678,030	920%	\$ 2,324,886	198%
Operating Margin	3%	0.3%	880%	1%	181%

**KERN MEDICAL
BALANCE SHEET**

	JANUARY 2021	JANUARY 2020
ASSETS:		
<i>Total Cash</i>	38,778,746	6,436,477
Patient Receivables Subtotal	253,995,945	275,830,599
Contractual Subtotal	(208,851,768)	(214,047,396)
<i>Net Patient Receivable</i>	45,144,177	61,783,204
Total Indigent Receivable	134,651,928	107,349,192
Total Other Receivable	7,272,154	12,548,698
Total Prepaid Expenses	4,086,598	4,169,279
Total Inventory	6,067,269	5,552,622
<i>Total Current Assets</i>	236,000,873	197,839,470
Deferred Outflows of Resources	87,863,462	85,025,528
Investments Deposited with Trustee	0	931,830
Total Land, Equipment, Buildings and Intangib	195,164,680	194,022,995
Total Construction in Progress	22,737,950	11,418,880
<i>Total Property, Plant & Equipment</i>	217,902,630	205,441,874
Total Accumulated Depr & Amortization	(120,758,818)	(111,970,597)
<i>Net Property, Plant, and Equipment</i>	97,143,811	93,471,278
<i>Total Long Term Assets</i>	87,863,462	85,957,357
<i>Total Assets</i>	421,008,146	377,268,106

**KERN MEDICAL
BALANCE SHEET**

	JANUARY 2021	JANUARY 2020
LIABILITIES & EQUITY:		
Total Accounts Payable	7,869,148	21,134,631
Total Accrued Compensation	34,947,223	25,859,096
Total Due Government Agencies	37,778,645	39,670,655
Total Other Accrued Liabilities	42,495,316	51,804,505
<i>Total Current Liabilities</i>	123,090,332	138,468,886
Unfunded Pension Liability	322,103,797	307,234,709
Other Long-Term Liabilities	96,456,658	113,006,704
<i>Total Long-Term Liabilities</i>	418,560,455	420,241,413
<i>Total Liabilities</i>	541,650,787	558,710,299
<hr/>		
Fund Balance	36,714,022	36,714,021
Retained Earnings	(157,356,662)	(218,156,215)
<i>Total Fund Balance</i>	(120,642,641)	(181,442,194)
<hr/>		
<i>Total Liabilities and Fund Balance</i>	421,008,146	377,268,106
<hr/>		



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

March 17, 2021

Subject: Kern County Hospital Authority Chief Executive Officer Report

Recommended Action: Receive and File

Summary:

The Chief Executive Officer of the Kern County Hospital Authority will provide your Board with a hospital-wide update.

**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 March 17, 2021, 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**

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 March 17, 2021, 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)) –