



## **AGENDA**

### **KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS**

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

Regular Meeting  
Wednesday, July 19, 2023

11:30 A.M.

#### **BOARD TO RECONVENE**

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz, Pollard  
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)) –

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on June 21, 2023 and special meeting on June 29, 2023 –  
APPROVE

CA

- 4) Proposed retroactive Personal/Professional Services Agreement with Patton Sheet Metal Works, Inc., doing business as Patton Air Conditioning, an independent contractor, for H/VAC mechanical system maintenance and repairs, from July 14, 2023 through July 13, 2026, in an amount not to exceed \$950,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 5) Proposed Amendment No. 1 to Personal/Professional Services Agreement 55521 with Skarphol/Frank Associates, formally known as Paul Skarphol, doing business as Skarphol Associates, an independent contractor, for architectural/engineering services for major maintenance and capital projects, , for the period November 19, 2021 through November 18, 2024, increasing the maximum payable by \$250,000, from \$250,000 to \$500,000, to cover the term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Agreement with Mountain West Builders, Inc, an independent contractor, for construction services related to laboratory modifications, effective July 19, 2023, in an amount not to exceed \$148, 020 –  
MAKE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$134,564

CA

- 7) Proposed Master Lease Schedule No, 682210 to Agreement 053-2018 with Presidio Technology Capital, LLC, an independent contractor, for the lease of core network switches to support Philips Telemetry and Novarad PACS Radiology Imaging Core Systems, from August 1, 2023 through July 31, 2028, in an amount not to exceed \$7,318,974 –  
APPROVE; AUTHORIZED CHAIRMAN TO SIGN

CA

- 8) Proposed Addendum to Agreement 078-2018 with UBEO West, LLC, formally known as Ray A Morgan Company, an independent contractor, containing nonstandard terms and conditions, for the period April 20, 2019 through April 19, 2024, for purchase of additional IT equipment in an amount not to exceed \$6,550 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Agreement with CareFusion Solutions, LLC, doing business as MedKeeper, an independent contractor, for pharmacy compliance and operations software from July 19, 2023 through July 18, 2028, in an amount not to exceed \$160,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Service Agreement with Morrison Management Specialists, Inc., an independent contractor, for dietary and nutrition services from August 1, 2023 through July 31, 2028, in an amount estimated not to exceed \$9,800,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed retroactive Service Contract with Sciton, Inc., an independent contractor, containing nonstandard terms and conditions, for laser device repairs, for a term of one year from May 17, 2023 through May 16, 2024, in an amount not to exceed \$22,454, and rescission of Agreement 063-2023, dated May 17, 2023 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed retroactive Amendment No. 2 to the Memorandum of Understanding 062-2021 with Kern Behavioral Health and Recovery Services, an independent contractor, for mental health services, for the period July 1, 2022 through June 30, 2024, to delineate responsibility for transportation, credentialing and ECT services, effective December 6, 2022, and rescission of Amendment 085-2023, dated June 21, 2023 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Update on Section 218 Election of the Social Security Act –  
RECEIVE AND FILE

CA

- 14) Proposed Compliance Program for Fiscal Year 2023-2024 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

15) Proposed Agreement with C-S and J Pathology Medical Group, Inc., an independent contractor, containing nonstandard terms and conditions, for professional medical services in the Department of Pathology from July 19, 2023 through July 18, 2024, in an amount not to exceed \$20,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

16) Proposed Agreement with Alton Scott Thygerson, a contract employee, for services as chief executive officer of Kern County Hospital Authority for an initial term of three years, effective July 19, 2023, with an option to renew for one additional term of two years, in an amount not to exceed \$1,970,261 during the initial term and \$1,377,533 during the renewal term, with total compensation not to exceed \$3,347,794 over the term, plus applicable benefits –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

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

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

CA

19) Monthly report on What's Happening at Kern Medical Center –  
RECEIVE AND FILE

CA

20) Miscellaneous Correspondence –  
RECEIVE AND FILE

CA

21) Claims and Lawsuits Filed as of June 30, 2023 –  
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

22) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –

23) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) –

24) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(d)(2) & (e)(2)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Meridian Healthcare Partners, Inc. –



- 25) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB –
- 26) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –
- 27) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –
- 28) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employees (Government Code Section 54957.6) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, AUGUST 16, 2023 AT 11:30 A.M.

## **SUPPORTING DOCUMENTATION FOR AGENDA ITEMS**

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

### **AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)**

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

20) MISCELLANEOUS CORRESPONDENCE AS OF MAY 17, 2023 –

- A) Correspondence received June 19, 2023, from George Pfister, Clinical Nurse Leader in the BHU, concerning seismic retrofit questions for the June 21, 2023 Board Meeting (referred to Board of Governors)
- B) Correspondence dated June 13, 2023, from Kathleen Krause, Clerk of the Board, Kern County Board of Supervisors, concerning reappointment of Stephen Pelz to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2026

21) CLAIMS AND LAWSUITS FILED AS OF JUNE 30, 2023 –  
RECEIVE AND FILE

- A) Claim in the matter of Sheri Hafferman
- B) Claim in the matter of April Hughes
- C) Summons and Complaint in the matter of Jeffry Huffman, an individual, Plaintiff, v. Kern County Hospital Authority, a California Public Entity; and DOES 1 through 25, inclusive, Kern County Superior Court Case No. BCV-23-101842



## SUMMARY OF PROCEEDINGS

### KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting  
Wednesday, June 21, 2023

11:30 A.M.

#### BOARD RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz, Pollard  
Roll Call: 6 Present; 1 Absent - 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

NOTE: ITEM 27 WAS REMOVED FROM THE CONSENT AGENDA. A CLERICAL ERROR WAS FOUND ON THE ATTACHED EXHIBIT G-1, MAXIMUM FUNDING SCHEDULE, TO AMENDMENT NO. 1 OF THE MEMORANDUM OF UNDERSTANDING BETWEEN KERN BEHAVIORAL HEALTH AND RECOVERY SERVICES AND KERN COUNTY HOSPITAL AUTHORITY. THE EXHIBIT STATES THAT THE TOTAL OF THE LISTED FEES IS \$13,986,050, BUT THE ACTUAL TOTAL OF THE LISTED FEES IS \$14,167,550. THE INDIVIDUAL FEES LISTED IN THE EXHIBIT ARE CORRECT. THIS IS CONSIDERED A CLERICAL ERROR AND DOES NOT IMPACT, CHANGE, OR ALTER THE PURPOSE OF THE EXHIBIT. A COPY OF THE CORRECTED EXHIBIT IS AVAILABLE FOR REVIEW BY THE PUBLIC AND WILL PUBLISHED AS CORRECTED ITEM 27

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!**

**LARONDA DILLARD SMITH HEARD REGARDING THE REPORT PROVIDED BY NURSING ADMINISTRATION AT THE MAY 17, 2023 BOARD OF GOVERNORS MEETING. SEIU CONTINUES TO RECEIVE COMPLAINTS FROM NURSING SUPERVISORS WHO DO NOT KNOW WHAT THEIR ROLE IS FOLLOWING THE ADDITION OF STAFF TO ABSORB SOME OF THEIR PRIOR DUTIES AND IS SEEKING CLARIFICATION SINCE THE ISSUE HAS NOT BEEN RESOLVED DURING LABOR MANAGEMENT MEETINGS**

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)) –  
**NO ONE HEARD**

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on May 17, 2023 and special meeting on June 1, 2023 –  
APPROVED  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 4) Proposed Sales Order OPT-0453635 to Agreement 2016-36 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of an interface to integrate the Vision Blood Bank Analyzer Laboratory Instrument, for a term of 60 months, effective June 21, 2023, in an amount not to exceed \$12,100 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 065-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 5) Proposed Sales Order OPT-0473201 to Agreement 2016-36 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of an interface for medical coding, for a term of 60 months, effective July 1, 2023, in an amount not to exceed \$49,590 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 066-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 6) Proposed Sales Order OPT-0462928 to Agreement 2016-36 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of additional electronic prescription licenses, for a term of 36 months, effective June 21, 2023, in an amount not to exceed \$31,068 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 067-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 7) Proposed Sales Order OPT-0467771 to Agreement 2016-36 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, to upgrade the virtual server to improve the use of electronic prescriptions, at no cost –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 068-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 8) Proposed Sales Order OPT-0290305 to Agreement 2016-36 with Cerner Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of an interface into CareAware software, in an amount not to exceed \$1,500 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 069-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 9) Proposed Business Associate Agreement with ESO Solutions, Inc., an independent contractor, containing nonstandard terms and conditions, for access to the Kern Medical Center electronic health record in support of trauma site registry, effective June 21, 2023 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 070-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 10) Proposed Master Services Agreement with RLDatix North America Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of a policy management subscription service, for a term of 36 months, effective June 21, 2023, in an amount not to exceed \$105,705 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 071-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 11) Proposed Quote 2009122709.16 with GE Precision Healthcare, LLC, an independent contractor, for purchase of a 1.5 Tesla Signa Voyager MRI, in an amount not to exceed \$1,327,640, plus applicable taxes –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 072-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 12) Proposed Amendment No. 1 to Agreement 030-2022 with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology from April 1, 2022 through March 31, 2024, decreasing the minimum number of required shifts from 15 to 12, effective July 1, 2023 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 073-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 13) Proposed Amendment No. 5 to Agreement 718-2016 with the County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department, for the provision of medical services to adult inmates and juvenile detainees at county owned and operated jail facilities, extending the term for one year from July 1, 2023 through June 30, 2024 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 074-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 14) Proposed Amendment No. 1 to Agreement 057-2020 with Thyssenkrupp Elevator Corporation, an independent contractor, for design and construction upgrades to the D Wing elevators, increasing the maximum payable by \$96,740, from \$2,325,883 to \$2,244,623, effective June 21, 2023, extending the anticipated completion date to December 2024 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 075-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 15) Proposed Agreement with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for construction services to install a temporary nurse call system in the Emergency Department, effective June 21, 2023, in an amount not to exceed \$98,450 –  
MADE FINDING THAT THE 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 076-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE OF \$98,450  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 16) Proposed Notice to Extend Agreement 03116 with the County of Kern, to lease a portion of the Public Services Building at 2700 "M" Street, Bakersfield, for the period April 20, 2016 through June 30, 2023, extending the term for three years from July 1, 2023 through June 30, 2026, and increasing the maximum payable by \$174,776, from \$2,162,794 to \$2,337,570, to cover the extended term –  
APPROVED AGREEMENT 077-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 17) Proposed Agreement with Payground, Inc, an independent contractor, containing nonstandard terms and conditions, for digital patient payment services from June 21, 2023 through June 20, 2027, in an amount not to exceed \$288,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 078-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 18) Proposed Second Amendment to Master Agreement 035-2021 with Savista, LLC, an independent contractor, for oncology data management and abstracting services, from July 1, 2021 through June 30, 2023, extending the term for three years from July 1, 2023 through June 30, 2026, and increasing the maximum payable by \$525,000, from \$335,000 to \$860,000, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 079-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**



CA

- 19) Proposed renewal and binding of insurance coverages for hospital professional liability, general liability and umbrella/excess liability, workers' compensation and employers liability, automobile liability, heliport and non-owned aircraft liability, directors and officers liability, employment practices liability, healthcare regulatory liability, crime, privacy and security (cyber) liability, premises pollution liability, underground storage tank liability, employed lawyers professional liability, and fiduciary liability from July 1, 2023 through June 30, 2024, with option to finance selected premiums through PRISM and BankDirect Capital Finance in an amount not to exceed \$1,868,346 –

APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY AGREEMENT 080-2023 WITH BANKDIRECT CAPITAL FINANCE

**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 20) Proposed Amendment No. 2 to Agreement 23917 with Foundation for Medical Care of Kern County, an independent contractor, for access to provider network services related to the Kern Medical Center self-insured workers' compensation program, for the period July 1, 2017 through June 30, 2023, extending the term for three years from July 1, 2023 through June 30, 2026, and increasing the maximum payable by \$50,000, from \$100,000 to \$150,000, to cover the extended term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 081-2023

**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 21) Proposed Amendment No. 6 to Agreement 2016-030 with Valley Neurosurgery and Neurorestoration Center APC, an independent contractor, for neurological surgery services for the period July 1, 2016 through June 30, 2024, adding payment for mid-level support for daytime, nighttime and holiday call coverage not to exceed 4700 hours per contract year, and increasing the maximum payable by \$564,000, from \$6,058,080 to \$6,622,080, to cover the renewal term from July 1, 2021 through June 30, 2024 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 082-2023

**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 22) Proposed Amendment No. 1 to Agreement 119-2022 with M. Brandon Freeman, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery from October 22, 2022 through October 21, 2025, revising the compensation for elective cosmetic procedures with no increase in the maximum payable –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 083-2023

**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA

- 23) Proposed Resolution in the matter of Advanced Practice Providers recognizing graduate registered nurse anesthetist as a category of advanced practice provider approved for practice at Kern Medical Center, effective July 1, 2023 –

APPROVED; ADOPTED RESOLUTION 2023-007

**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA  
24) Proposed Statement of Institutional Commitment to Graduate Medical Education in support of residency and fellowship training programs sponsored by Kern Medical Center, as required by Accreditation Council for Graduate Medical Education from July 1, 2023 through June 30, 2028 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA  
25) Proposed approval of the Kern Medical Center Policy and Procedures Manual –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN SIGNATURE PAGE  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA  
26) Proposed Kern County Hospital Authority Organizational Chart effective June 21, 2023 –  
APPROVED  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

**CORRECTED ITEM 27**

27) Proposed retroactive Amendment No. 1 to Memorandum of Understanding 062-2021 with Kern Behavioral Health and Recovery Services, an independent contractor, for mental health services, for the period July 1, 2022 through June 30, 2024, to revise the Maximum Funding Schedule **with total fees not to exceed \$14,167,550** –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 084-2023  
**Pelz-McLaughlin: 6 Ayes; 1 Absent - Berjis**

CA  
28) Proposed retroactive Amendment No. 2 to Memorandum of Understanding 062-2021 with Kern Behavioral Health and Recovery Services, an independent contractor, for mental health services, for the period July 1, 2022 through June 30, 2024, to include transportation, credentialing, and ECT services, effective December 6, 2022 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 085-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA  
29) Proposed Healthcare Master Agreement with Nuance Communications, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of Powerscribe 360 software and hardware for the Department of Radiology from July 1, 2023 through June 30, 2024, in an amount not to exceed \$18,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 086-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

CA  
30) Proposed Amendment No. 8 to the Managed Services 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 30, 2023, extending the term for one month from July 1, 2023 through July 31, 2023, and increasing the maximum payable by \$246,757, from \$14,575,299 to \$14,822,056, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 087-2023  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

- 31) Kern County Hospital Authority Chief Financial Officer report –  
CHIEF FINANCIAL OFFICER ANDREW CANTU HEARD; RECEIVED AND FILED  
**McLaughlin-Pollard: 6 Ayes; 1 Absent - Berjis**
- 32) Kern County Hospital Authority Chief Executive Officer report –  
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON HEARD; CHAIRMAN BIGLER HEARD  
REGARDING THE RESIDENT/FELLOW GRADUATION; RECEIVED AND FILED  
**Pelz-Alsop: 6 Ayes; 1 Absent - Berjis**
- CA  
33) Monthly report on What's Happening at Kern Medical Center –  
RECEIVED AND FILED  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**
- CA  
34) Miscellaneous Correspondence –  
RECEIVED AND FILED  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**
- CA  
35) Claims and Lawsuits Filed as of May 31, 2023 –  
RECEIVED AND FILED  
**Pollard-Pelz: 6 Ayes; 1 Absent - Berjis**

ADJOURNED TO CLOSED SESSION  
**Pollard-Alsop**

CLOSED SESSION

- 36) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 37) CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED 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
- 38) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Brian Snellgrove and Jennifer Snellgrove v. Kern County Hospital Authority, and DOES 1 through 100, Inclusive, Kern County Superior Court No. BCV-20-102881-TSC – SEE RESULTS BELOW
- 39) 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

NOTE: CHIEF EXECUTIVE OFFICER SCOTT THYGERSON LEFT THE ROOM PRIOR TO THE DISCUSSION ON AGENDA ITEM 40 AND DID NOT RETURN UNTIL AFTER THE BOARD RECONVENED FROM CLOSED SESSION

NOTE: VICE PRESIDENT & GENERAL COUNSEL KAREN S. BARNES LEFT THE ROOM PRIOR TO THE DISCUSSION ON AGENDA ITEM 40 AND RETURNED TO THE MEETING FOLLOWING THE DISCUSSION ON AGENDA ITEM 40

- 40) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(e)(3)) Number of cases: Three (3) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection – SEE RESULTS BELOW
- 41) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2) & (e)(2)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Meridian Healthcare Partners, Inc. – SEE RESULTS BELOW
- 42) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – SEE RESULTS BELOW
- 43) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

**Alsop-McLaughlin**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 36 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 ALSOP, SECOND BY DIRECTOR MCLAUGHLIN; 1 ABSENT - DIRECTOR BERJIS) THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, REQUEST FOR REVISION OF PRIVILEGES, AND VOLUNTARY RESIGNATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 37 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED 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. 38 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Brian Snellgrove and Jennifer Snellgrove v. Kern County Hospital Authority, and DOES 1 through 100, Inclusive, Kern County Superior Court No. BCV-20-102881-TSC – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 39 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

Item No. 40 concerning CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(e)(3)) Number of cases: Three (3) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 41 concerning CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2) & (e)(2)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Meridian Healthcare Partners, Inc. – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 42 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 43 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, JULY 19, 2023 AT 11:30 A.M.

**Pollard**

/s/ Mona A. Allen  
Authority Board Coordinator

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



## SUMMARY OF PROCEEDINGS

### KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Special Meeting  
Thursday, June 29, 2023

11:30 A.M.

#### BOARD RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz, Pollard  
Roll Call: 5 Present; 2 Absent - Pelz, Pollard

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.

#### 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))  
**NO ONE HEARD**

ADJOURNED TO CLOSED SESSION  
**Berjis-McLaughlin**

CLOSED SESSION

- 3) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – SEE RESULTS BELOW
- 4) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – SEE RESULTS BELOW
- 5) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – SEE RESULTS BELOW
- 6) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employees (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENE FROM CLOSED SESSION  
**Berjis-McLaughlin**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 3 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – HEARD; NO REPORTABLE ACTION TAKEN



Item No. 4 CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 5 CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 6 CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employees (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, JULY 19, 2023, AT 11:30 A.M.

**Berjis**

/s/ Mona A. Allen  
Authority Board Coordinator

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



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

July 19, 2023

**SUBJECT:** Proposed retroactive Professional Services Agreement with Patton Sheet Metal Works., Inc., dba Patton Air Conditioning to provide maintenance and repairs to mechanical systems.

**Requested Action:** Make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, Retroactively Approve; Authorize Chairman to sign.

**Summary:**

Kern Medical is requesting your Board retroactively approve the proposed Agreement with Patton Sheet Metal Works, Inc., dba Patton Air Conditioning, to provide mechanical system maintenance and repairs at Kern Medical and clinic spaces. The term of the Agreement is three years, effective July 14, 2023 through July 13, 2026, with a total maximum payable of \$950,000.

This agreement is retroactive for emergency repairs of the HVAC system.

Therefore, it is recommended that your Board a make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the retroactive Agreement for Professional Services with Patton Sheet Metal Works, Inc., dba Patton Air Conditioning, effective July 14, 2023 through July 13, 2026, with a maximum payable of \$950,000 and authorize the Chairman to sign.

**KERN COUNTY HOSPITAL AUTHORITY**  
**PERSONAL/PROFESSIONAL SERVICES AGREEMENT**  
**SCHEDULE TO MASTER TERMS AND CONDITIONS: PPSA**

THIS SCHEDULE shall be effective on: July 14, 2023 ("Effective Date") and shall terminate no later than July 13, 2026.

Kern County Hospital Authority Department: Engineering ("Responsible KCHA Department")

Located at: 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.

Service Provider: Patton Sheet Metal Works, Inc. dba Patton Air Conditioning ("Consultant")

Located at: 272 N. Palm Avenue, Fresno California 93701

Consultant is (select one):  
 Sole Proprietorship  
 Incorporated in the State of California.  
 Other (specify) \_\_\_\_\_

Consultant shall provide those services described in Exhibit "A" which is attached hereto and incorporated herein by this reference.

Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder, including any reimbursement of travel expenses and other costs incurred by Consultant under this Agreement, in an aggregate sum not to exceed \$950,000. Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

(Select one of the following two)

- KCHA shall not reimburse Consultant for any costs or travel expenses incurred by Consultant hereunder.  
 KCHA shall reimburse Consultant for all necessary and reasonable actual costs or travel expenses incurred on behalf of KCHA. If the reimbursable expenses include travel, the travel expenses must be reasonable and necessary, approved in advance by the Responsible KCHA Department, and shall not exceed the following KCHA per diems: Lodging, \$116.00 per night plus tax; breakfast, \$14.00; lunch, \$16.00; dinner, \$26.00; economy rental car; and mileage, if by private automobile, at \$.56 per mile; and by common carrier at actual fare charged for economy or coach class.

Consultant shall be required to have the following Insurance coverages, as described in the Master Terms and Conditions, in the minimum amounts indicated: (select all that apply)

- Workers' Compensation: As required by California Labor Code Section 3700  
 Commercial General Liability (\$1,000,000/Occurrence & \$3,000,000/Aggregate) or other amounts \_\_\_\_\_ & \_\_\_\_\_  
 Automobile Liability (\$1,000,000/Occurrence) or other amounts \_\_\_\_\_ & \_\_\_\_\_  
 Professional Liability (\$1,000,000/Occurrence & \$2,000,000/Aggregate) or other amounts \_\_\_\_\_ & \_\_\_\_\_

**Note:** If a lesser amount is shown, the Responsible KCHA Department must obtain the prior written approval of KCHA's Risk Manager.

Should any conflicts arise between this Schedule and the Master Terms and Conditions attached hereto and incorporated herein by this reference, the Schedule shall control.

IN WITNESS WHEREOF, each party has signed this Schedule upon the date indicated, and agrees, for itself, its employees, officers, partners and successors, to be fully bound by all terms and conditions of this Agreement.

**KERN COUNTY HOSPITAL AUTHORITY**

**APPROVED AS TO CONTENT:**  
Responsible KCHA Department

By: \_\_\_\_\_  
Russell Bigler, Board of Governors Chairman  
"KCHA"

By: \_\_\_\_\_  
Scott Thygerson, Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PATTON SHEET METAL WORKS, INC.**  
**dba PATTON AIR CONDITIONING**

**APPROVED AS TO FORM:**  
Legal Services Department

By:   
Dan Reyes Title:  
"Consultant"

By:   
Hospital Counsel, Kern County Hospital Authority

Date: 7/5/2023

Date: 7/6/2023

**KERN COUNTY HOSPITAL AUTHORITY**  
**PERSONAL/PROFESSIONAL SERVICES AGREEMENT**  
**MASTER TERMS AND CONDITIONS**  
**PPSA-STANDARD**

THIS AGREEMENT ("Agreement") is entered into on the Effective Date shown on the attached Schedule, by and between the KERN COUNTY HOSPITAL AUTHORITY, a local unit of government, which owns and operates Kern Medical Center, as represented by the Chief Executive Officer ("KCHA"), with its principal location at 1700 Mount Vernon Avenue, Bakersfield, CA 93306, and CONSULTANT identified on the Schedule ("Consultant"). KCHA and Consultant are individually referred to as a "Party" and collectively as the "Parties."

**RECITALS**

- A. KCHA 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. The KCHA Department identified on the Schedule as the Responsible KCHA Department requires those services which are specified in Exhibit A.
- C. KCHA desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.
- D. The Chief Executive Officer ("CEO") has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

**AGREEMENT**

1. **Services to be Rendered.** Consultant shall provide the services and products described in Exhibit A ("Services").
2. **Compensation to Consultant.** KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.
3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.
4. **Term.** This term of this Agreement ("Term") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.
5. **Assignment.** Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO.
6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall permit KCHA to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three 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 and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as KCHA.
7. **Authority to Bind KCHA.** It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCHA to any agreements or undertakings.
8. **Indemnification.**
  - a. **General.** Consultant shall defend, indemnify, and hold harmless KCHA and KCHA's board members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives ("KCHA Indemnified Parties") from any losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs (including attorneys' fees of in-

house and outside counsel, expert fees, costs of staff time, and investigation costs) ("Claims") which arise out of or relate to any act or omission of Consultant or Consultant's officers, employees, agents and subcontractors of any tier hired by Consultant to perform the Services ("Consultant Representatives"). This indemnification obligation shall include bodily and personal injury or death to any person; damage to any property, regardless of where located, including the property of KCHA; and any workers' compensation Claim arising from or relating to any Services.

b. **Immigration Reform and Control Act.** Consultant acknowledges that Consultant and Consultant Representatives are aware of and understand the Immigration Reform and Control Act ("IRCA"). Consultant is and shall remain in compliance with the IRCA and shall ensure that any Consultant Representatives are and shall remain in compliance with the IRCA. In addition, Consultant shall defend, indemnify and hold harmless KCHA and KCHA Indemnified Parties from any Claims which arise out of or relate to any allegations that Consultant and Consultant Representatives are not authorized to work in the United States and/or any other allegations based upon alleged IRCA violations committed by Consultant or Consultant Representatives.

c. **Infringement Claim.** If any Claim is asserted or action or proceeding brought against KCHA or KCHA Indemnified Parties which alleges that all or any part of the Services in the form supplied by Consultant or KCHA's use, infringes or misappropriates any United States or foreign patent or copyright, or any trade secret or other proprietary right, KCHA shall give Consultant prompt written notice. Consultant shall defend any Claim with counsel of Consultant's choice and at Consultant's sole cost and shall indemnify KCHA for any costs, including attorney's fees and damages actually incurred by KCHA, including steps KCHA may take to avoid entry of any default judgment or other waiver of KCHA's rights. KCHA shall cooperate fully with and may monitor Consultant in the defense of any claim, action or proceeding and shall make employees available as Consultant may reasonably request with regard to the defense, subject to reimbursement by Consultant of all costs incurred by KCHA's cooperation in the defense.

d. **Remedy of Infringement Claim.** If the Services are, in Consultant's opinion, likely to become or do become the subject of a claim of infringement or misappropriation of a United States or foreign patent, copyright, trade secret or other proprietary right, or if a temporary restraining order or other injunctive relief is entered against the use of part or all of the Services, Consultant shall within 90 days:

1. **Replace.** Promptly replace the Services with compatible, functionally equivalent and non-infringing Services;
2. **Modify.** Promptly modify the Services to make them non-infringing without materially impairing KCHA's ability to use the Services as intended;
3. **Procure Rights.** Promptly procure the right of KCHA to continue using the Services; or
4. **Refund.** As a last resort, if none of these alternatives is reasonably available to Consultant, and KCHA is enjoined or otherwise precluded legally from using the Services, Consultant shall, within 120 days of the judgment or other court action, promptly refund to KCHA all fees and costs paid for the Services, and this Agreement shall terminate. All licensed products will be disposed of as ordered by the governing court at the sole cost of Consultant or as determined by KCHA if the court does not so direct.

e. **Modification of Services.** This indemnification does not extend to modifications or additions to the Services made by KCHA or any third party without the prior written consent of Consultant, or to any unauthorized use of the Services by KCHA.

f. **Survival of Indemnification Obligations.** Upon completion of this Agreement, the provisions of this Section 8 shall survive.

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

10. **Consultant Representations.** Consultant makes the following representations, which the Parties agree are material to and form a part of the inducement for this Agreement:

- a. **Expertise and Staff.** Consultant has the expertise, support staff and facilities necessary to provide the Services; and
- b. **No Adverse Interests.** Consultant does not have any actual or potential interests adverse to KCHA, nor does Consultant represent a person or firm with an interest adverse to KCHA relating to the subject of this Agreement; and
- c. **Timeliness.** Consultant shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.

11. **Ownership of Documents.** All reports, documents and other items generated or gathered in the course of providing the Services are and shall remain the property of KCHA, and shall be returned to KCHA upon full completion of the Services or termination of this Agreement, whichever first occurs.

12. **Rights to Contracted Products.**

a. **Belong to KCHA.** For no additional fee or charge, products developed, prepared, generated or gathered by Consultant or Consultant's Representatives under this Agreement, shall be considered creative works for hire and shall be delivered to and become the exclusive property of KCHA and may be used by KCHA in any way it may deem appropriate. Consultant shall have no rights in the products, except the right to use the products for the exclusive purpose of providing the Services, and Consultant shall not copy or disclose to any third party any product, except as is expressly set forth in this Agreement or by separate written agreement between the Parties. These provisions do not apply to Consultant's original licensed software or administrative communications and records, which shall remain the exclusive property of Consultant,

b. **Use by KCHA.** The ideas, concepts, know-how, and techniques developed during the course of this Agreement may be used by KCHA in any way it may deem appropriate, so long as that use does not violate any term in this Agreement or any Applicable Law.

c. **No Publication.** Consultant or Consultant's Representatives shall not publish or disseminate information gained through participation in this Agreement without the specific prior review and written consent by KCHA.

d. **Delivery to KCHA.** Upon termination or expiration of this Agreement, Consultant shall immediately deliver to KCHA all KCHA-owned programs and documentation developed under this Agreement. In addition, Consultant grants to KCHA a perpetual, royalty-free, non-exclusive, irrevocable, and non-transferable license to use, solely for KCHA purposes, any Consultant-owned program, including system software, utilized by Consultant in performance of the Services.

e. **Survival of Covenants.** Upon completion of this Agreement, the provisions of this Section 12 shall survive.

13. **Termination.** The CEO may at his or her election, without cause, terminate this Agreement by written notice ("Notice of Termination"). The Notice of Termination will be deemed effective 15 days after personal delivery, or 20 days after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination. In the event this Agreement is terminated by either Consultant or the CEO, Consultant shall submit to the Responsible KCHA Department all files, memoranda, documents, correspondence and other items generated in the course of performing the Services, within 15 days after the effective date of the Notice of Termination. If either Party terminates this Agreement as provided in this Section 13, KCHA shall pay Consultant for all satisfactory Services rendered by Consultant prior to the effective date of Notice of Termination in an amount not to exceed the maximum dollar amount shown on the Schedule.

14. **Choice of Law/Venue.** The Parties agree that the provisions of this Agreement shall be construed under the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.

15. **Compliance with Applicable Law.** Consultant shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or later enacted ("Applicable Law"), each of which is made a part of this Agreement. While on KCHA property, Consultant will also follow all applicable policies and any direction of staff.

16. **Confidentiality.** Consultant shall not, without the prior written consent of the CEO, communicate confidential information, designated in writing or identified in this Agreement as confidential, to any third party and shall protect confidential information from inadvertent disclosure to any third party in the same manner that it protects its own confidential information, unless disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this Section 16 shall continue to survive.

17. **Conflict of Interest.** Consultant has read and is aware of the provisions of Government Code Section 1090 et seq. and Section 87100 et seq. relating to conflict of interest of public officers and employees. Consultant acknowledges that it is unaware of any financial or economic interest of any public officer or employee of KCHA relating to this Agreement. If it is further understood and agreed that if a financial interest does exist at the inception of this Agreement, KCHA may immediately terminate this Agreement by giving written notice. Consultant shall comply with the requirements of Government Code Section 1090 et seq. and 87100 et seq. during the Term.

18. **Cooperation with KCHA Compliance Obligations.** Consultant shall cooperate with the compliance program maintained by KCHA and KMC (the "Compliance Program") to the extent that such requirements are (i) applicable to the operation of KCHA or KMC and Consultant's provision of services under this Agreement, (ii) consistent with applicable industry standards and laws, and (iii) communicated to Consultant, so that KCHA may meet all requirements imposed by laws and any governing or advisory body



having authority to set standards governing the operation of KCHA and KMC.

19. **Disqualified Persons.** Consultant represents and warrants that no person providing goods and/or services under the terms of this Agreement (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General ("OIG") and provided proof of such reinstatement to KCHA), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Consultant agrees that if any individuals providing goods and/or services under the terms of this Agreement becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an "Enforcement Action"), Consultant shall immediately notify KCHA and such individual shall be immediately removed by Consultant from any functions, provided, however, that if Consultant is directly involved in the Enforcement Action, any agreement between KCHA and Consultant shall terminate immediately.

20. **Enforcement of Remedies.** No right or remedy conferred on or reserved to a Party is exclusive of any other right or remedy under law, equity or statute, but each shall be cumulative of every other right or remedy now or in the future existing under law, equity or statute, and may be enforced concurrently or from time to time.

21. **Health Insurance Portability and Accountability Act-HITECH.** Consultant understands that KCHA is a Covered Entity that provides medical and mental health services and that Consultant has no authorization to obtain access to any Protected Health Information ("PHI") in any form while performing services for KCHA. If, in the course of performing services, Consultant sees or hears any PHI, this PHI is to be treated as private and confidential, including the fact that a person has visited this facility(ies) or receives (or previously received) services from KCHA. The privacy and confidentiality of KCHA's patients are protected by KCHA policies and procedures, state laws and regulations and Federal HIPAA Regulations. If appropriate Consultant agrees to execute a business associate agreement with KCHA to supplement this Agreement if requested, to be incorporated herein as Exhibit D if so required.

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

23. **Negation of Partnership.** In the performance of the Services, Consultant shall be, and acknowledges that Consultant is, in fact and law, an independent contractor and not an agent or employee of KCHA. Consultant has and retains the right to exercise full supervision and control of the manner and methods of providing the Services. Consultant retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Consultant in the provision of the Services. With respect to Consultant's employees, if any, Consultant 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 employee taxes, whether federal, state or local, and compliance with any Applicable Law regulating employment.

24. **Non-collusion Covenant.** Consultant represents and agrees that (i) it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with KCHA and (ii) it has received from KCHA no incentive or special payments and no considerations not related to the provision of the Services.

25. **Non-discrimination.** Neither Consultant, nor any Consultant Representative, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or any other classification protected by Applicable Law, either directly, indirectly or through contractual or other arrangements.

26. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of KCHA. Forbearance or indulgence by KCHA shall not constitute a waiver of the covenant or condition to be performed by Consultant. KCHA shall be entitled to invoke any remedy available to KCHA under this Agreement or by Applicable Law despite the forbearance or indulgence.

27. **Notices.** All notices under this Agreement shall be provided to the KCHA CEO at the address indicated in the opening section of this Agreement and to the Consultant and Responsible KCHA Department at the addresses shown on the Schedule. Delivery shall be by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified above. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices under this Agreement by leaving the notice with the receptionist or other person of like capacity employed in Consultant's office, or the CEO.



28. **Captions and Interpretation.** Section 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 the provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. California Civil Code Section 1654 shall not apply to the interpretation of this Agreement.

29. **Counterparts.** This Agreement 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 document.

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

31. **Regulatory Compliance.** In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Consultant shall apprise Kern Medical of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by Kern Medical for follow-up action and evaluation of performance.

32. **Access to Books and Records.** Until the expiration of four years after the expiration or termination of this Agreement, Kern Medical and Consultant shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("Secretary") or the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Consultant provided under this Agreement.

33. **Severability.** If any term or provision of this Agreement is determined by a court to be in conflict with any Applicable Law, or otherwise be unenforceable or ineffectual, the validity of the remaining terms or provisions shall be deemed severable and shall not be affected, provided that the remaining terms or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into on the Effective Date.

34. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person 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 the Schedule and Exhibits, contains the entire agreement of the Parties relating to the Services, rights, obligations and covenants contained in this Agreement and assumed by the Parties. No inducements, representations or promises have been made, other than those stated in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

36. **Time of Essence.** Time is expressly declared to be of the essence of this Agreement and of each provision, and each provision is declared to be a material, necessary and essential part of this Agreement.

37. **No Third Party Beneficiaries.** The Parties understand and agree that the enforcement of these terms and conditions and all rights of action relating to enforcement, shall be strictly reserved to KCHA and Consultant. Nothing contained in this Agreement shall give or allow any claim or right of action by any other third person. It is the express intention of KCHA and Consultant that any person or entity, other than KCHA or Consultant, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

38. **Gender/Plural.** References to feminine, masculine or neutral include the other, and references to the singular or plural include the other.

39. **Recitals.** Each of the recitals is incorporated in this Agreement, is deemed to be the agreement and a reflection of the intent of the Parties, and is relied upon by the Parties in agreeing to the provisions of this Agreement and in interpreting its provisions.

40. **Exhibits.** The below exhibits attached to this Agreement are incorporated into this Agreement by reference.  
Exhibit A: Services  
Exhibit A-1: IRS Form W-9  
Exhibit B: Intentionally Omitted  
Exhibit C: Insurance  
Exhibit D: Intentionally Omitted  
Exhibit E: Additional Engineering Terms

**EXHIBIT A  
SERVICES**

Provide all labor, material, and equipment to complete mechanical services and maintenance as needed when called upon by Kern Medical. All work will require individual job specific quotations.

EXHIBIT A-1

IRS FORM W-9

## EXHIBIT "C" Insurance

With respect to performance of work under this Agreement, Consultant 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 KCHA. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

KCHA 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 Consultant 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 Consultant has employees. If Consultant currently has no employees, Consultant's written confirmation of such will be required before execution of this Agreement. If Consultant engages any employees during the term of this Agreement or any extensions thereof, Consultant 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 KCHA for all work performed by Consultant, 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 Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- (c) If Consultant 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 KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
- (e) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.
- (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 KCHA and Consultant and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

### 3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Consultant currently owns no autos, Consultant 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) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

### 4. Professional Liability Insurance (Errors and Omissions):

- (a) Professional Liability Insurance (Errors and Omissions) appropriate to Consultant's profession.
  - (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate. If Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
  - (c) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
  - (d) Required Evidence of Coverage: Certificate of Insurance.
5. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.
6. Additional Insured Wording: "Kern County Hospital Authority, its officers, officials, employees and volunteers" are to be named as Additional Insureds as per each section where noted above.
7. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
  - (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work.*
  - (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Consultant must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of the contract work.
8. Documentation:
- (a) The Certificate of Insurance must include the following reference: "**Agreement for Professional Services – Master Facility Plan.**"
  - (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
  - (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
  - (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
  - (e) Consultant 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 KCHA within 30 days.
9. Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
10. Primary Coverage: For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects KCHA, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by KCHA, its officers, directors, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
11. Waiver of Subrogation: Consultant hereby grants to KCHA a waiver of any right to subrogation, which any insurer of said Consultant may acquire against KCHA by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not KCHA has received a waiver of subrogation endorsement from the insurer.
12. Material Breach: If Consultant fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. KCHA, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Consultant, KCHA may deduct from sums due to Consultant any premium costs advanced by KCHA for such insurance. These remedies shall be in addition to any other remedies available to KCHA.

[Intentionally left blank]

**EXHIBIT E**  
**ADDITIONAL TERMS APPLICABLE TO CONSTRUCTION/ENGINEERING AGREEMENTS**

The Kern County Hospital Authority (KCHA), a public agency that is a local unit of government, which owns and operates Kern Medical Center, is subject to a variety of statutes (e.g. codes) and regulations that now apply to you as a Consultant/Contractor of KCHA. This Exhibit E outlines some, but not necessarily all of the requirements that you may now be required to meet as a Consultant/Contractor of a public entity.

**I. COMPLIANCE WITH LABOR STANDARDS**

1. KCHA has determined that the work contemplated by this Agreement falls within the definitions of "Public Works" set forth in the California Labor Code. Contractor acknowledges that Contractor is fully aware of prevailing wage requirements for public works projects as set forth in Article 2 (commencing with section 1770) of Chapter 1, Part 7 of the California Labor Code ("Prevailing Wage Requirements") and Contractor agrees to comply with the provisions of that Article to the extent the Prevailing Wage Requirements are applicable to the work conducted under this Agreement. Contractor further agrees that to the extent applicable, Contractor shall require any subcontractor it contracts with to comply with the Prevailing Wage Requirements. Contractor also agrees to indemnify, defend (upon request of KCHA) and hold, its officers, agents and employees, harmless from all claims, costs, causes of action, attorney fees, damages or liability from the failure of Contractor or Contractor's subcontractors to comply with the Prevailing Wage Requirements.

The Department of Industrial Relations of the State of California has determined the general prevailing rate of wages for each craft, classification or type of workers needed in the execution of contracts under the jurisdiction of Kern County. The schedule of rates can be obtained from or are on file with the Engineering Department at Kern Medical Center, located at 1700 Mt. Vernon Avenue, Bakersfield, CA 93305 and is hereby incorporated herein by this reference.

**II. APPRENTICESHIP PROGRAM**

**1. Compliance Required**

Contractor and Subcontractors shall comply with the requirements of California Labor Code §§1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

**2. Certification of Approval**

California Labor Code §1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:

- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
- B. When the number of apprentices in training in the area exceeds a ratio of one to five;
- C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
- D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

**3. Fund Contributions**

Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

**4. Apprenticeship Standards**

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

**III. SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION**

**1. INSURANCE**

- A. In addition to the Insurance requirements in Exhibit C, Contractor, in order to protect the KCHA and its board members, officials, agents, officers, employees and volunteers against all claims and liability for death, injury, loss and damage as a result of

Contractor's actions in connection with the performance of Contractor's obligations, as required in the Contract Documents, shall secure and maintain insurance as described below. Contractor shall not perform any work under the Contract Documents until Contractor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with KCHA's authorized insurance representative, Exigis.

**1) Workers' Compensation and Employers Liability Insurance Requirement** -- In the event Contractor has employees who may perform any services pursuant to the Contract Documents, Contractor shall submit written proof that Contractor is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

By signing the Agreement, Contractor makes the following certification, required by section 1861 of the Labor Code:

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work pursuant to the Contract Documents.

2) If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from KCHA under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from KCHA, KCHA may retain out of sums due Contractor under the Contract Documents, an amount sufficient to cover such compensation, as fixed by the Workers' Compensation Insurance and Safety Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If KCHA is compelled to pay compensation, KCHA may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse KCHA.

3) Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.

4) All Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in the Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to KCHA within ten Days of KCHA's request.

## 2. INDEMNIFICATION

- A. In addition to the Indemnification requirements in the Agreement, KCHA and each of its officers, employees, consultants and agents including, but not limited to, its Board, Project Manager and any Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- B. To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, KCHA in accordance with the Agreement and with respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against KCHA and each of its officers, employees, consultants and agents including, but not limited to KCHA, the Board, Project Manager and any Representative. KCHA shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.
- 1) Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
  - 2) To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, KCHA may in its discretion back charge Contractor for KCHA's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
  - 3) The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to KCHA or other indemnified party to the extent of its active negligence.



**KERN COUNTY HOSPITAL AUTHORITY  
PERSONAL/PROFESSIONAL SERVICES AGREEMENT  
SCHEDULE TO MASTER TERMS AND CONDITIONS: PPSA**

THIS SCHEDULE shall be effective on: July 19, 2023 ("Effective Date") and shall terminate no later than July 18, 2026.

Kern County Hospital Authority Department: Engineering ("Responsible KCHA Department")

Located at: 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.

Service Provider: Patton Sheet Metal Works, Inc. dba Patton Air Conditioning ("Consultant")

Located at: 272 N. Palm Avenue, Fresno California 93701

Consultant is (select one):  
 Sole Proprietorship  
 Incorporated in the State of California.  
 Other (specify) \_\_\_\_\_.

Consultant shall provide those services described in Exhibit "A" which is attached hereto and incorporated herein by this reference.

Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder, including any reimbursement of travel expenses and other costs incurred by Consultant under this Agreement, in an aggregate sum not to exceed \$450,000. Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

(Select one of the following two)

KCHA shall **not** reimburse Consultant for any costs or travel expenses incurred by Consultant hereunder.  
 KCHA shall reimburse Consultant for all necessary and reasonable actual costs or travel expenses incurred on behalf of KCHA. If the reimbursable expenses include travel, the travel expenses must be reasonable and necessary, approved in advance by the Responsible KCHA Department, and shall not exceed the following KCHA per diems: Lodging, \$116.00 per night plus tax; breakfast, \$14.00; lunch, \$16.00; dinner, \$26.00; economy rental car; and mileage, if by private automobile, at \$.56 per mile; and by common carrier at actual fare charged for economy or coach class.

Consultant shall be required to have the following Insurance coverages, as described in the Master Terms and Conditions, in the minimum amounts indicated: (select all that apply)

Workers' Compensation: As required by California Labor Code Section 3700  
 Commercial General Liability (\$1,000,000/Occurrence & \$3,000,000/Aggregate) or other amounts \_\_\_\_\_ & \_\_\_\_\_  
 Automobile Liability (\$1,000,000/Occurrence) or other amounts \_\_\_\_\_ & \_\_\_\_\_  
 Professional Liability (\$1,000,000/Occurrence & \$2,000,000/Aggregate) or other amounts \_\_\_\_\_ & \_\_\_\_\_

**Note:** If a lesser amount is shown, the Responsible KCHA Department must obtain the prior written approval of KCHA's Risk Manager.

Should any conflicts arise between this Schedule and the Master Terms and Conditions attached hereto and incorporated herein by this reference, the Schedule shall control.

**IN WITNESS WHEREOF**, each party has signed this Schedule upon the date indicated, and agrees, for itself, its employees, officers, partners and successors, to be fully bound by all terms and conditions of this Agreement.

**KERN COUNTY HOSPITAL AUTHORITY**

**APPROVED AS TO CONTENT:**  
Responsible KCHA Department

By: \_\_\_\_\_  
Russell Bigler, Board of Governors Chairman  
"KCHA"

By: \_\_\_\_\_  
Scott Thygerson, Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PATTON SHEET METAL WORKS, INC.**  
dba **PATTON AIR CONDITIONING**

**APPROVED AS TO FORM:**  
Legal Services Department

By:   
Dan Reyes Title:  
"Consultant"

By: \_\_\_\_\_  
Hospital Counsel, Kern County Hospital Authority

Date: 7/5/2023

Date: \_\_\_\_\_

**KERN COUNTY HOSPITAL AUTHORITY**  
**PERSONAL/PROFESSIONAL SERVICES AGREEMENT**  
**MASTER TERMS AND CONDITIONS**  
**PPSA-STANDARD**

THIS AGREEMENT ("Agreement") is entered into on the Effective Date shown on the attached Schedule, by and between the KERN COUNTY HOSPITAL AUTHORITY, a local unit of government, which owns and operates Kern Medical Center, as represented by the Chief Executive Officer ("KCHA"), with its principal location at 1700 Mount Vernon Avenue, Bakersfield, CA 93306, and CONSULTANT identified on the Schedule ("Consultant"). KCHA and Consultant are individually referred to as a "Party" and collectively as the "Parties."

**RECITALS**

- A. KCHA 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. The KCHA Department identified on the Schedule as the Responsible KCHA Department requires those services which are specified in Exhibit A.
- C. KCHA desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.
- D. The Chief Executive Officer ("CEO") has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

**AGREEMENT**

1. **Services to be Rendered.** Consultant shall provide the services and products described in Exhibit A ("Services").
2. **Compensation to Consultant.** KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.
3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.
4. **Term.** This term of this Agreement ("Term") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.
5. **Assignment.** Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO.
6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall permit KCHA to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three 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 and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as KCHA.
7. **Authority to Bind KCHA.** It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCHA to any agreements or undertakings.
8. **Indemnification.**
  - a. **General.** Consultant shall defend, indemnify, and hold harmless KCHA and KCHA's board members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives ("KCHA Indemnified Parties") from any losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs (including attorneys' fees of in-

house and outside counsel, expert fees, costs of staff time, and investigation costs) ("Claims") which arise out of or relate to any act or omission of Consultant or Consultant's officers, employees, agents and subcontractors of any tier hired by Consultant to perform the Services ("Consultant Representatives"). This indemnification obligation shall include bodily and personal injury or death to any person; damage to any property, regardless of where located, including the property of KCHA; and any workers' compensation Claim arising from or relating to any Services.

b. **Immigration Reform and Control Act.** Consultant acknowledges that Consultant and Consultant Representatives are aware of and understand the Immigration Reform and Control Act ("IRCA"). Consultant is and shall remain in compliance with the IRCA and shall ensure that any Consultant Representatives are and shall remain in compliance with the IRCA. In addition, Consultant shall defend, indemnify and hold harmless KCHA and KCHA Indemnified Parties from any Claims which arise out of or relate to any allegations that Consultant and Consultant Representatives are not authorized to work in the United States and/or any other allegations based upon alleged IRCA violations committed by Consultant or Consultant Representatives.

c. **Infringement Claim.** If any Claim is asserted or action or proceeding brought against KCHA or KCHA Indemnified Parties which alleges that all or any part of the Services in the form supplied by Consultant or KCHA's use, infringes or misappropriates any United States or foreign patent or copyright, or any trade secret or other proprietary right, KCHA shall give Consultant prompt written notice. Consultant shall defend any Claim with counsel of Consultant's choice and at Consultant's sole cost and shall indemnify KCHA for any costs, including attorney's fees and damages actually incurred by KCHA, including steps KCHA may take to avoid entry of any default judgment or other waiver of KCHA's rights. KCHA shall cooperate fully with and may monitor Consultant in the defense of any claim, action or proceeding and shall make employees available as Consultant may reasonably request with regard to the defense, subject to reimbursement by Consultant of all costs incurred by KCHA's cooperation in the defense.

d. **Remedy of Infringement Claim.** If the Services are, in Consultant's opinion, likely to become or do become the subject of a claim of infringement or misappropriation of a United States or foreign patent, copyright, trade secret or other proprietary right, or if a temporary restraining order or other injunctive relief is entered against the use of part or all of the Services, Consultant shall within 90 days:

1. **Replace.** Promptly replace the Services with compatible, functionally equivalent and non-infringing Services;
2. **Modify.** Promptly modify the Services to make them non-infringing without materially impairing KCHA's ability to use the Services as intended;
3. **Procure Rights.** Promptly procure the right of KCHA to continue using the Services; or
4. **Refund.** As a last resort, if none of these alternatives is reasonably available to Consultant, and KCHA is enjoined or otherwise precluded legally from using the Services, Consultant shall, within 120 days of the judgment or other court action, promptly refund to KCHA all fees and costs paid for the Services, and this Agreement shall terminate. All licensed products will be disposed of as ordered by the governing court at the sole cost of Consultant or as determined by KCHA if the court does not so direct.

e. **Modification of Services.** This indemnification does not extend to modifications or additions to the Services made by KCHA or any third party without the prior written consent of Consultant, or to any unauthorized use of the Services by KCHA.

f. **Survival of Indemnification Obligations.** Upon completion of this Agreement, the provisions of this Section 8 shall survive.

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

10. **Consultant Representations.** Consultant makes the following representations, which the Parties agree are material to and form a part of the inducement for this Agreement:

- a. **Expertise and Staff.** Consultant has the expertise, support staff and facilities necessary to provide the Services; and
- b. **No Adverse Interests.** Consultant does not have any actual or potential interests adverse to KCHA, nor does Consultant represent a person or firm with an interest adverse to KCHA relating to the subject of this Agreement; and
- c. **Timeliness.** Consultant shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.

11. **Ownership of Documents.** All reports, documents and other items generated or gathered in the course of providing the Services are and shall remain the property of KCHA, and shall be returned to KCHA upon full completion of the Services or termination of this Agreement, whichever first occurs.

12. **Rights to Contracted Products.**

a. **Belong to KCHA.** For no additional fee or charge, products developed, prepared, generated or gathered by Consultant or Consultant's Representatives under this Agreement, shall be considered creative works for hire and shall be delivered to and become the exclusive property of KCHA and may be used by KCHA in any way it may deem appropriate. Consultant shall have no rights in the products, except the right to use the products for the exclusive purpose of providing the Services, and Consultant shall not copy or disclose to any third party any product, except as is expressly set forth in this Agreement or by separate written agreement between the Parties. These provisions do not apply to Consultant's original licensed software or administrative communications and records, which shall remain the exclusive property of Consultant,

b. **Use by KCHA.** The ideas, concepts, know-how, and techniques developed during the course of this Agreement may be used by KCHA in any way it may deem appropriate, so long as that use does not violate any term in this Agreement or any Applicable Law.

c. **No Publication.** Consultant or Consultant's Representatives shall not publish or disseminate information gained through participation in this Agreement without the specific prior review and written consent by KCHA.

d. **Delivery to KCHA.** Upon termination or expiration of this Agreement, Consultant shall immediately deliver to KCHA all KCHA-owned programs and documentation developed under this Agreement. In addition, Consultant grants to KCHA a perpetual, royalty-free, non-exclusive, irrevocable, and non-transferable license to use, solely for KCHA purposes, any Consultant-owned program, including system software, utilized by Consultant in performance of the Services.

e. **Survival of Covenants.** Upon completion of this Agreement, the provisions of this Section 12 shall survive.

13. **Termination.** The CEO may at his or her election, without cause, terminate this Agreement by written notice ("Notice of Termination"). The Notice of Termination will be deemed effective 15 days after personal delivery, or 20 days after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination. In the event this Agreement is terminated by either Consultant or the CEO, Consultant shall submit to the Responsible KCHA Department all files, memoranda, documents, correspondence and other items generated in the course of performing the Services, within 15 days after the effective date of the Notice of Termination. If either Party terminates this Agreement as provided in this Section 13, KCHA shall pay Consultant for all satisfactory Services rendered by Consultant prior to the effective date of Notice of Termination in an amount not to exceed the maximum dollar amount shown on the Schedule.

14. **Choice of Law/Venue.** The Parties agree that the provisions of this Agreement shall be construed under the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.

15. **Compliance with Applicable Law.** Consultant shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or later enacted ("Applicable Law"), each of which is made a part of this Agreement. While on KCHA property, Consultant will also follow all applicable policies and any direction of staff.

16. **Confidentiality.** Consultant shall not, without the prior written consent of the CEO, communicate confidential information, designated in writing or identified in this Agreement as confidential, to any third party and shall protect confidential information from inadvertent disclosure to any third party in the same manner that it protects its own confidential information, unless disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this Section 16 shall continue to survive.

17. **Conflict of Interest.** Consultant has read and is aware of the provisions of Government Code Section 1090 et seq. and Section 87100 et seq. relating to conflict of interest of public officers and employees. Consultant acknowledges that it is unaware of any financial or economic interest of any public officer or employee of KCHA relating to this Agreement. If it is further understood and agreed that if a financial interest does exist at the inception of this Agreement, KCHA may immediately terminate this Agreement by giving written notice. Consultant shall comply with the requirements of Government Code Section 1090 et seq. and 87100 et seq. during the Term.

18. **Cooperation with KCHA Compliance Obligations.** Consultant shall cooperate with the compliance program maintained by KCHA and KMC (the "Compliance Program") to the extent that such requirements are (i) applicable to the operation of KCHA or KMC and Consultant's provision of services under this Agreement, (ii) consistent with applicable industry standards and laws, and (ii) communicated to Consultant, so that KCHA may meet all requirements imposed by laws and any governing or advisory body

having authority to set standards governing the operation of KCHA and KMC.

19. **Disqualified Persons.** Consultant represents and warrants that no person providing goods and/or services under the terms of this Agreement (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General ("OIG") and provided proof of such reinstatement to KCHA), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Consultant agrees that if any individuals providing goods and/or services under the terms of this Agreement becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an "Enforcement Action"), Consultant shall immediately notify KCHA and such individual shall be immediately removed by Consultant from any functions, provided, however, that if Consultant is directly involved in the Enforcement Action, any agreement between KCHA and Consultant shall terminate immediately.

20. **Enforcement of Remedies.** No right or remedy conferred on or reserved to a Party is exclusive of any other right or remedy under law, equity or statute, but each shall be cumulative of every other right or remedy now or in the future existing under law, equity or statute, and may be enforced concurrently or from time to time.

21. **Health Insurance Portability and Accountability Act-HITECH.** Consultant understands that KCHA is a Covered Entity that provides medical and mental health services and that Consultant has no authorization to obtain access to any Protected Health Information ("PHI") in any form while performing services for KCHA. If, in the course of performing services, Consultant sees or hears any PHI, this PHI is to be treated as private and confidential, including the fact that a person has visited this facility(ies) or receives (or previously received) services from KCHA. The privacy and confidentiality of KCHA's patients are protected by KCHA policies and procedures, state laws and regulations and Federal HIPAA Regulations. If appropriate Consultant agrees to execute a business associate agreement with KCHA to supplement this Agreement if requested, to be incorporated herein as Exhibit D if so required.

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

23. **Negation of Partnership.** In the performance of the Services, Consultant shall be, and acknowledges that Consultant is, in fact and law, an independent contractor and not an agent or employee of KCHA. Consultant has and retains the right to exercise full supervision and control of the manner and methods of providing the Services. Consultant retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Consultant in the provision of the Services. With respect to Consultant's employees, if any, Consultant 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 employee taxes, whether federal, state or local, and compliance with any Applicable Law regulating employment.

24. **Non-collusion Covenant.** Consultant represents and agrees that (i) it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with KCHA and (ii) it has received from KCHA no incentive or special payments and no considerations not related to the provision of the Services.

25. **Non-discrimination.** Neither Consultant, nor any Consultant Representative, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or any other classification protected by Applicable Law, either directly, indirectly or through contractual or other arrangements.

26. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of KCHA. Forbearance or indulgence by KCHA shall not constitute a waiver of the covenant or condition to be performed by Consultant. KCHA shall be entitled to invoke any remedy available to KCHA under this Agreement or by Applicable Law despite the forbearance or indulgence.

27. **Notices.** All notices under this Agreement shall be provided to the KCHA CEO at the address indicated in the opening section of this Agreement and to the Consultant and Responsible KCHA Department at the addresses shown on the Schedule. Delivery shall be by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified above. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices under this Agreement by leaving the notice with the receptionist or other person of like capacity employed in Consultant's office, or the CEO.

28. **Captions and Interpretation.** Section 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 the provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. California Civil Code Section 1654 shall not apply to the interpretation of this Agreement.

29. **Counterparts.** This Agreement 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 document.

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

31. **Regulatory Compliance.** In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Consultant shall apprise Kern Medical of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by Kern Medical for follow-up action and evaluation of performance.

32. **Access to Books and Records.** Until the expiration of four years after the expiration or termination of this Agreement, Kern Medical and Consultant shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("Secretary") or the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Consultant provided under this Agreement.

33. **Severability.** If any term or provision of this Agreement is determined by a court to be in conflict with any Applicable Law, or otherwise be unenforceable or ineffectual, the validity of the remaining terms or provisions shall be deemed severable and shall not be affected, provided that the remaining terms or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into on the Effective Date.

34. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person 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 the Schedule and Exhibits, contains the entire agreement of the Parties relating to the Services, rights, obligations and covenants contained in this Agreement and assumed by the Parties. No inducements, representations or promises have been made, other than those stated in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

36. **Time of Essence.** Time is expressly declared to be of the essence of this Agreement and of each provision, and each provision is declared to be a material, necessary and essential part of this Agreement.

37. **No Third Party Beneficiaries.** The Parties understand and agree that the enforcement of these terms and conditions and all rights of action relating to enforcement, shall be strictly reserved to KCHA and Consultant. Nothing contained in this Agreement shall give or allow any claim or right of action by any other third person. It is the express intention of KCHA and Consultant that any person or entity, other than KCHA or Consultant, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

38. **Gender/Plural.** References to feminine, masculine or neutral include the other, and references to the singular or plural include the other.

39. **Recitals.** Each of the recitals is incorporated in this Agreement, is deemed to be the agreement and a reflection of the intent of the Parties, and is relied upon by the Parties in agreeing to the provisions of this Agreement and in interpreting its provisions.

40. **Exhibits.** The below exhibits attached to this Agreement are incorporated into this Agreement by reference.

- Exhibit A: Services
- Exhibit A-1: IRS Form W-9
- Exhibit B: Intentionally Omitted
- Exhibit C: Insurance
- Exhibit D: Intentionally Omitted
- Exhibit E: Additional Engineering Terms

**EXHIBIT A  
SERVICES**

Provide all labor, material, and equipment to complete mechanical services and maintenance as needed when called upon by Kern Medical. All work will require individual job specific quotations.



**EXHIBIT A-1**

**IRS FORM W-9**

## EXHIBIT "C" Insurance

With respect to performance of work under this Agreement, Consultant 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 KCHA. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

KCHA 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 Consultant 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 Consultant has employees. If Consultant currently has no employees, Consultant's written confirmation of such will be required before execution of this Agreement. If Consultant engages any employees during the term of this Agreement or any extensions thereof, Consultant 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 KCHA for all work performed by Consultant, 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 Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- (c) If Consultant 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 KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
- (e) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.
- (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 KCHA and Consultant and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

### 3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Consultant currently owns no autos, Consultant 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) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

### 4. Professional Liability Insurance (Errors and Omissions):

- (a) Professional Liability Insurance (Errors and Omissions) appropriate to Consultant's profession.
  - (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate. If Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
  - (c) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
  - (d) Required Evidence of Coverage: Certificate of Insurance.
5. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.
  6. Additional Insured Wording: "Kern County Hospital Authority, its officers, officials, employees and volunteers" are to be named as Additional Insureds as per each section where noted above.
  7. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
    - (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
    - (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work*.
    - (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Consultant must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of the contract work.
  8. Documentation:
    - (a) The Certificate of Insurance must include the following reference: "**Agreement for Professional Services – Master Facility Plan.**"
    - (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
    - (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
    - (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
    - (e) Consultant 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 KCHA within 30 days.
  9. Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
  10. Primary Coverage: For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects KCHA, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by KCHA, its officers, directors, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
  11. Waiver of Subrogation: Consultant hereby grants to KCHA a waiver of any right to subrogation, which any insurer of said Consultant may acquire against KCHA by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not KCHA has received a waiver of subrogation endorsement from the insurer.
  12. Material Breach: If Consultant fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. KCHA, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Consultant, KCHA may deduct from sums due to Consultant any premium costs advanced by KCHA for such insurance. These remedies shall be in addition to any other remedies available to KCHA.

[Intentionally left blank]

**EXHIBIT E**  
**ADDITIONAL TERMS APPLICABLE TO CONSTRUCTION/ENGINEERING AGREEMENTS**

The Kern County Hospital Authority (KCHA), a public agency that is a local unit of government, which owns and operates Kern Medical Center, is subject to a variety of statutes (e.g. codes) and regulations that now apply to you as a Consultant/Contractor of KCHA. This Exhibit E outlines some, but not necessarily all of the requirements that you may now be required to meet as a Consultant/Contractor of a public entity.

**I. COMPLIANCE WITH LABOR STANDARDS**

1. KCHA has determined that the work contemplated by this Agreement falls within the definitions of "Public Works" set forth in the California Labor Code. Contractor acknowledges that Contractor is fully aware of prevailing wage requirements for public works projects as set forth in Article 2 (commencing with section 1770) of Chapter 1, Part 7 of the California Labor Code ("Prevailing Wage Requirements") and Contractor agrees to comply with the provisions of that Article to the extent the Prevailing Wage Requirements are applicable to the work conducted under this Agreement. Contractor further agrees that to the extent applicable, Contractor shall require any subcontractor it contracts with to comply with the Prevailing Wage Requirements. Contractor also agrees to indemnify, defend (upon request of KCHA) and hold , its officers, agents and employees, harmless from all claims, costs, causes of action, attorney fees, damages or liability from the failure of Contractor or Contractor's subcontractors to comply with the Prevailing Wage Requirements.

The Department of Industrial Relations of the State of California has determined the general prevailing rate of wages for each craft, classification or type of workers needed in the execution of contracts under the jurisdiction of Kern County. The schedule of rates can be obtained from or are on file with the Engineering Department at Kern Medical Center, located at 1700 Mt. Vernon Avenue, Bakersfield, CA 93305 and is hereby incorporated herein by this reference.

**II. APPRENTICESHIP PROGRAM**

**1. Compliance Required**

Contractor and Subcontractors shall comply with the requirements of California Labor Code §§1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

**2. Certification of Approval**

California Labor Code §1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:

- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
- B. When the number of apprentices in training in the area exceeds a ratio of one to five;
- C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
- D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

**3. Fund Contributions**

Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

**4. Apprenticeship Standards**

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

**III. SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION**

**1. INSURANCE**

- A. In addition to the Insurance requirements in Exhibit C, Contractor, in order to protect the KCHA and its board members, officials, agents, officers, employees and volunteers against all claims and liability for death, injury, loss and damage as a result of

Contractor's actions in connection with the performance of Contractor's obligations, as required in the Contract Documents, shall secure and maintain insurance as described below. Contractor shall not perform any work under the Contract Documents until Contractor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with KCHA's authorized insurance representative, Exigis.

**1) Workers' Compensation and Employers Liability Insurance Requirement** -- In the event Contractor has employees who may perform any services pursuant to the Contract Documents, Contractor shall submit written proof that Contractor is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

By signing the Agreement, Contractor makes the following certification, required by section 1861 of the Labor Code:

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work pursuant to the Contract Documents.

2) If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from KCHA under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from KCHA, KCHA may retain out of sums due Contractor under the Contract Documents, an amount sufficient to cover such compensation, as fixed by the Workers' Compensation Insurance and Safety Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If KCHA is compelled to pay compensation, KCHA may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse KCHA.

3) Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.

4) All Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in the Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to KCHA within ten Days of KCHA's request.

## 2. INDEMNIFICATION

- A. In addition to the Indemnification requirements in the Agreement, KCHA and each of its officers, employees, consultants and agents including, but not limited to, its Board, Project Manager and any Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- B. To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, KCHA in accordance with the Agreement and with respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against KCHA and each of its officers, employees, consultants and agents including, but not limited to KCHA, the Board, Project Manager and any Representative. KCHA shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.
- 1) Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
  - 2) To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, KCHA may in its discretion back charge Contractor for KCHA's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
  - 3) The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to KCHA or other indemnified party to the extent of its active negligence.



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

July 19, 2023

**Subject:** Proposed Amendment No. 1 to the Professional Services Agreement 55521 with Skarphol/Frank Associates

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board's approval of the proposed Amendment No. 1 to the Professional Services Agreement with Skarphol/Frank Associates to provide design services for budgeted construction projects at the main campus and clinic spaces. This Amendment will increase the maximum payable from \$250,000 to \$500,000 to cover additional construction projects including the redesign of the radiology area.

Therefore, it is recommended that your Board approve Amendment No. 1 to the Personal/Professional Services Agreement with Skarphol/Frank Associates to increase the maximum payable from \$250,000 to \$500,000 and authorize the Chairman to sign.

**AMENDMENT NO. 1  
TO  
PERSONAL/PROFESSIONAL SERVICES AGREEMENT  
(Kern County Hospital Authority – Skarphol/Frank Associates  
formally Paul Skarphol dba Skarphol Associates)**

THIS AMENDMENT TO AGREEMENT, effective July 19, 2023, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and Skarphol/Frank Associates formally Paul Skarphol dba Skarphol Associates ("Consultant") with its principal place of business located at 925 17<sup>th</sup> Street, Bakersfield, California 93301.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement dated effective November 19, 2021 (Agt. #55521) ("Agreement"), for the period November 19, 2021 through November 18, 2024; 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 \_\_\_\_ to \_\_\_\_, unless sooner terminated as provided for in the Agreement.
- Fees** payable by KCHA under the Agreement shall increase by \$250,000, from \$250,000 to \$500,000.
- Travel Expenses** payable by KCHA under the Agreement shall increase from by \$, from \$ to \$.
- Services.** See Exhibits \_\_\_\_ and \_\_, attached hereto and incorporated herein by this reference, for revised Services.
- Other:** Modify company name from Paul Skarphol dba Skarphol Associates to Skarphol/Frank Associates.

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. 1 to the Agreement has been executed as of the date indicated above.

**KERN COUNTY HOSPITAL AUTHORITY**

**APPROVED AS TO CONTENT:**

Responsible KCHA Department

By \_\_\_\_\_  
Russell Bigler, Board of Governors Chairman  
"KCHA"

By \_\_\_\_\_  
Scott Thygeron, Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SKARPHOL/FRANK ASSOCIATES**

**APPROVED AS TO FORM:**

Legal Services Department

By   
\_\_\_\_\_  
Gregory J. Frank, Architect No. C-31980  
"Consultant"

By   
\_\_\_\_\_  
Hospital Counsel  
Kern County Hospital Authority

Date: 6/30/2023

Date: 7/5/23





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

July 19, 2023

**Subject:** Proposed Agreement with Mountain West Builders, Inc.

**Recommended Action:** Make finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines; Approve; Authorize Chairman to sign; Authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price

**Summary:**

Kern Medical requests your Board's approval of the proposed Agreement with Mountain West Builders, Inc., to make modifications to the laboratory to accommodate new equipment.

The Agreement is effective as of July 19, 2023, with construction anticipated to be completed within three months of commencement. The projected cost for this project is \$148,020, which includes future change orders of up to 10% of the original contract price of \$134,564.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the Agreement, authorize Chairman to sign, and authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price of \$134,564.

**DOCUMENT 00500**

**AGREEMENT**

THIS AGREEMENT, dated this **19th** day of July 2023, is by and between **Mountain West Builders, Inc.**, whose place of business is located at **31500 Sierra Drive, Exeter, CA 93221** ("Contractor"), and the KERN COUNTY HOSPITAL AUTHORITY, a local unit of government (hereinafter "Owner and/or Authority"), acting under and by virtue of the authority vested in Owner by the laws of the State of California

WHEREAS, in consideration for the promises and payment to be made and performed by Authority, and under the conditions expressed in the incorporated Bid Proposal (Bid), bonds and related papers, Contractor agrees to do all the work and furnish all the materials at the expense of Contractor (except such as the Specifications state will be furnished by Authority) necessary to construct and complete in a good and workmanlike manner to the satisfaction of the Chief Executive Officer for the Kern County Hospital Authority all the work shown and described in the plans and specifications for the project known as:

**Lab Equipment Replacement 10104**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

**ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT**

**1.01 Work of the Contract**

- A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents (**Work**).

**1.02 Price for Completion of the Work**

- A. Owner shall pay Contractor the following Contract Sum **one hundred thirty-four thousand, five hundred sixty-four dollars (\$134,564.00)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

**ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK**

**2.01 Commencement of Work**

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).

- B. Owner reserves the right to modify or alter the Commencement Date.

**2.02 Completion of Work**

- A. Contractor shall achieve Final Completion of the entire Work **forty five (45) Working Days**, as defined in Document 01422, from the Commencement Date.

**ARTICLE 3 - LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK**

**3.01 Liquidated Damage Amounts**

- A. As liquidated damages for delay Contractor shall pay Owner five hundred dollars (\$500.00) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

**3.02 Scope of Liquidated Damages**

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00700 (General Conditions).

**ARTICLE 4 - CONTRACT DOCUMENTS**

**4.01** Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00001	Title Page
Document 00100	Notice to Contractors
Document 00200	Instruction to Bidders
Document 00300	Geotechnical Data and Existing Conditions
Document 00410	Bid Form
Document 00412	Bidder Registration Form
Document 00431	Subcontractors List
Document 00452	Non-Collusion Declaration
Document 00455	Bidder Certifications
Document 00500	Agreement
Document 00501	Proposed Contract Documents Transmittal
Document 00601	Construction Performance Bond
Document 00602	Construction Labor and Material Payment Bond
Document 00603	Guaranty
Document 00590	Release of Claims
Document 00700	General Conditions
Document 00738	Apprenticeship Programs
Document 00800	Supplementary Conditions – Insurance
Master Specifications	Divisions 1 through 16
Drawings	

**4.02** There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

**ARTICLE 5 – LIABILITY OF AUTHORITY**

**5.01** 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.

**ARTICLE 6 – MISCELLANEOUS**

**6.01** Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01422 (Definitions) and will have the meaning indicated therein.

**6.02** It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

**6.02** In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under

Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.

6.03 This project is subject to prevailing wage laws. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

6.04 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Kern, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Kern.

IN WITNESS WHEREOF the parties have executed seven original Agreements on the day and year first above written.

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By Phillip Jenkins  
Phillip Jenkins, Hospital Counsel

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Russell Bigler, Chairman, Board of Governors  
"KCHA"

APPROVED AS TO CONTENT:  
KERN MEDICAL HOSPITAL

By \_\_\_\_\_  
Scott Thygerson, Chief Executive Officer

By Michael Fink  
Michael Fink, Senior Facility Director

Contractor's Name

Type of Entity CORPORATION  
(corporation, partnership, sole proprietorship)

By John Ruz  
Signature

John Ruz  
Typed Name

CEO  
Title of Individual Executing Document on behalf of Firm

"CONTRACTOR"

Rev. 0  
April 12, 2014

**NOTICE:** CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND ARE REGULATED BY CONTRACTORS' STATE LICENSE BOARD. QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THAT BOARD, WHOSE ADDRESS IS: CONTRACTORS' STATE LICENSE BOARD, 1020 "N" STREET, SACRAMENTO, CALIFORNIA 95814.

**END OF DOCUMENT**



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

July 19, 2023

**Subject:** Proposed Master Lease Schedule No. 682210 with Presidio Technology Capital, LLC, for the lease to purchase network core infrastructure equipment to support Philips Telemetry and Novarad PACS projects

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests that your Board approve the lease to purchase core network switches with Presidio Technology Capital, LLC, to replace the end of life core network switches required to support hospital-wide telemetry patient monitoring and the Novarad PACS Radiology Imaging Core System projects. The network infrastructure, security application and network monitoring tools support all of Kern Medical’s core systems to ensure maximum uptime, redundancy, and effective security and monitoring tools needed to maintain business operations.

Kern Medical’s infrastructure investment in 2017 was approved for a maximum payable of \$4,880,000 with an additional \$500,000 to support the increased financial and clinical systems used by the hospital, ambulatory clinics, and correctional service lines. The table below depicts the annual average spend for infrastructure.

	2017	2018	2019	2020	2021	2022
Infrastructure Spend per year	\$974,200	\$974,200	\$974,200	\$1,141,200	\$1,141,200	\$200,000

The Master Lease Schedule with equipment totaling \$6,336,479 is for the purchase of equipment to replace the end of life infrastructure equipment purchased in 2017. We propose a sixty (60) month lease of \$110,894 per month, with a finance rate of 2.005% compounded monthly for a maximum not to exceed of \$7,318,974.

	2023	2024	2025	2026	2027
Infrastructure	\$1,460,000	1,460,000	1,460,000	1,460,000	1,460,000

Therefore, it is recommended that your Board approve the proposed Master Lease Schedule #682210 with Presidio Technology Capital, LLC for replacement infrastructure equipment, with a maximum payable of \$7,318,974, and for a term of sixty (60) months beginning August 1, 2023 through July 31, 2028 to support the current information technology infrastructure, and authorize the Chairman to sign the documents.

# PRESIDIO<sup>®</sup>

## TECHNOLOGY CAPITAL

PRESIDIO TECHNOLOGY CAPITAL, LLC ■ TWO SUN COURT, SUITE 120 ■ NORCROSS, GA. 30092-9204

### Master Lease Schedule

- 1. LESSEE NAME & ADDRESS: Kern County Hospital Authority  
1700 Mt. Vernon Ave.  
Bakersfield, CA 93306-4018
- Federal Tax ID No: 364642420  
State Incorporated: CA  
State ID No: C3157027
- 2. MASTER LEASE WITH: Kern County Hospital Authority
- 3. EQUIPMENT:  Equipment is listed on attached Equipment Addendum.
- 4. RENTAL PERIOD: 60 Months MONTHLY PAYMENT: \$110,893.55
- 5. ADVANCE PAYMENT: None.
- 6. BILLING INFORMATION: Lessee to provide
- 7. ADDITIONAL PROVISIONS: none

THIS SCHEDULE IS ISSUED PURSUANT TO THE MASTER LEASE, WHICH LESSEE HAS REVIEWED AND HEREBY REAFFIRMS, AND WILL BECOME EFFECTIVE ONLY WHEN ACCEPTED IN WRITING BY LESSOR AT ITS OFFICES IN NORCROSS, GEORGIA. LESSEE AGREES THAT THE EQUIPMENT AND LESSEE'S OBLIGATIONS WILL BE SUBJECT TO THE TERMS AND CONDITIONS OF THIS SCHEDULE AS IT INCORPORATES THOSE OF THE MASTER LEASE

**Presidio Technology Capital, LLC**

**Kern County Hospital Authority**

By: \_\_\_\_\_  
*Authorized Signature*  
\_\_\_\_\_  
*Name (Type or Print) Date*

By: \_\_\_\_\_ <Sign here  
*Authorized Signature*  
Russell Bigler 07/19/23  
\_\_\_\_\_  
*Name (Type or Print) Date*

NONE OF THE PROVISIONS OF THIS SCHEDULE MAY BE WAIVED OR AMENDED EXCEPT IN A WRITING SIGNED BY LESSEE AND LESSOR.

DATE OF ACCEPTANCE BY LESSOR:  
\_\_\_\_\_  
Norcross, Georgia

**Kern County Hospital Authority**  
By: \_\_\_\_\_ <Sign here  
*Authorized Signature*

APPROVED AS TO FORM  
Legal Services Department  
By:   
Kern County Hospital Authority



# PRESIDIO<sup>®</sup>

## TECHNOLOGY CAPITAL

PRESIDIO TECHNOLOGY CAPITAL, LLC ■ TWO SUN COURT ■ NORCROSS, GEORGIA 30092

### EXHIBIT A TO SCHEDULE NUMBER 682210 to MASTER LEASE AGREEMENT

ATTACHED TO AND MADE A PART OF the Master Lease Schedule Number 682210 ("Schedule") to the Master Lease Agreement dated July 24, 2018 between **Presidio Technology Capital, LLC** ("Lessor") and **Kern County Hospital Authority** ("Lessee").

#### I. MODIFICATIONS

A.1 For purposes of the Equipment on the Schedule, the Master Lease Agreement is amended by adding the following to the end thereof as new paragraphs:

#### 32. NONAPPROPRIATION OF FUNDS.

If Lessee's governing body, or, if applicable, the governmental entity from which Lessee obtains its operating and/or capital funds to appropriate money for any fiscal year sufficient for the continued performance by Lessee of all of Lessee's obligations under this Lease. Lessee may, upon giving prior written notice to Lessor effective 60 days after the giving of such notice and upon the exhaustion of the funding authorized for the then current appropriation period, return the Equipment at Lessee's expense and thereupon be released of its obligation to make all rental payments to Lessor due thereafter. The Equipment shall be returned to Lessor freight prepaid and insured to any location in the continental United States designated by Lessor in the same condition as when first delivered to Lessee, reasonable wear and tear resulting solely from authorized use thereof excepted. The foregoing notice [shall state the failure of the legislative body or funding authority to appropriate the necessary funds as reason for cancellation and] shall be accompanied by payment of all amounts then due to Lessor during the current fiscal year under the Agreement. Upon termination under this Section 32, Lessee shall not be responsible for the payment of any additional payments coming due in succeeding fiscal years.

In the event Lessee cancels the Equipment pursuant to the terms of this Section 32, Lessor shall retain all sums paid hereunder by Lessee including any security deposits paid hereunder, and in addition, Lessee shall pay to Lessor the termination charge, if any, specified in the applicable Schedule hereto.

#### 33. REPRESENTATIONS OF LESSEE.

Lessee represents and agrees as of the date of this Lease, and, so long as this Lease is in effect or any part of Lessee's obligations to Lessor remain unfulfilled, shall continue to agree at all times, that:

- (a) All requirements have been met, and procedures have occurred in order to insure the enforceability of this Lease and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Lease.
- (b) The Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee.
- (c) Lessee has funds available to pay all Payments until the end of its current appropriation period, and it will request funds to make payments in each appropriation period, from now until the end of the term of the Lease.
- (d) This Lease has been duly executed and constitutes a valid, legal and binding obligation of Lessee enforceable against Lessee in accordance with the respective terms hereof.
- (e) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is essential and not temporary or expected to diminish during the applicable Lease term. Lessee presently intends to continue each schedule hereunder for its entire lease term and to pay all rental payments relating thereto.

**II. The complete and exclusive statement of the agreement relating to this subject consists of the Master Lease Agreement, the Schedule and this Exhibit A. This statement of the agreement supersedes all proposals, letters and other agreements, oral or written, and all other communications between the parties relating to this subject. There are no promises, representations or warranties other than as expressly set forth in the Master Lease Agreement and the Schedule, as modified by this Exhibit A.**

IN WITNESS WHEREOF, each party has caused this Exhibit A to be executed by its duly authorized representative.

**Presidio Technology Capital, LLC**

**Kern County Hospital Authority**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name Russell Bigler

Title: \_\_\_\_\_

Title: Chairman, Board of Governors

Date: \_\_\_\_\_

Date: July 19, 2023





**July 19, 2023**

**Presidio Technology Capital, LLC**

2 Sun Court, Suite 120  
Norcross, GA 30092-9204

RE: Master Lease Agreement (“Lease Agreement”) dated July 24, 2018 and Lease Schedule STN: **682210** dated \_\_\_\_\_ each by and between **Presidio Technology Capital, LLC** (“Lessor”) and **Kern County Hospital Authority**, (“Lessee”)

Under the above-referenced Lease Agreement and all Lease Schedules, Lessee is required to maintain certain insurance policies with respect to the Equipment listed on Lease Schedules to the Lease Agreement between Lessor and Lessee. Subject thereto, provided that insurance policies are not required if Lessee has an adequate self-insurance program. This letter is for the sole purpose of describing Lessee’s self-insurance program.

- I. Kern County Hospital Authority maintains a robust self-insurance program which includes coverage for Commercial General Liability exposures, including property damage and public liability, arising out of Authority operations as allowed pursuant to Government Code Section 990 and Health and Safety Code Section 101855. This program consists of a Risk Management department overseen by the Vice President and General Counsel of the Authority. The program is self-administered with sufficient staff to resolve claims in a timely and effective manner.
  - (a) The self-insurance program is limited to a retention of \$1 million per occurrence with significant insurance coverage purchased in excess of the self-insured retention. The Authority maintains sufficient assets and reserves to cover its self-insured obligations.
  - (b) The Authority’s self-insurance program will only consider full replacement value or stated value if contractually agreed upon, otherwise settlement of property damage is limited to the actual cash value at the time of the loss.
  - (c) As indicated above, the Authority maintains excess coverage in excess of the \$1 million per occurrence retention. Said coverage is currently placed with Columbia Casualty (CNA).
  - (d) The Authority’s General Liability exposure is capped pursuant to the California Government Tort Claims Act (910, 910.2 & 910.4)

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

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

Capitalized terms contained herein but not defined shall have the same meaning as defined under the Master Lease Agreement.

Please do not hesitate to contact me if you have any questions concerning this letter.

Very truly yours,

**KERN COUNTY HOSPITAL AUTHORITY**

By: \_\_\_\_\_

Printed Name: Russell Bigler

Title: Chairman, Board of Governors



PRESIDIO TECHNOLOGY CAPITAL, LLC ■ TWO SUN COURT, SUITE 120 ■ NORCROSS, GA. 30092-9204

**Option to Purchase Equipment at End of Lease**

- 1. LESSEE NAME AND ADDRESS: Kern County Hospital Authority  
1700 Mt. Vernon Ave. - Bakersfield, CA 93306-4018
- 2. PURCHASE PRICE: FMV Purchase
- 3. EXERCISE: Lessee has the option of purchasing all but not less than all of the Equipment upon termination of the term of the Schedule, including any extensions, renewal terms or transition terms, by giving Presidio Technology Capital, LLC ("Lessor"), irrevocable notice at least ninety days prior to the end of the term and paying the specified purchase price at or before the end of the term. If an amount is not specified or "Fair Market Value" is indicated, the purchase price will be the amount Lessor determines would be obtainable at the expiration of the term in an arms' length retail sales transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller under no compulsion to sell.
- 4. TITLE: Provided the purchase option is exercised in the manner indicated and Lessee has fulfilled all Lessee's obligations under the Schedule and upon payment of above purchase price, title to the purchased Equipment will be transferred to Lessee, free and clear of all encumbrances created by or through Lessor, on an "AS IS" basis. All provisions of the Schedule will continue in effect until passage of title to the Equipment
- 5. GENERAL: It is understood and agreed that any software included under the Schedule is copyright protected and not subject to sale by Lessor whether pursuant to this purchase option or otherwise. Lessee may assign Lessee's rights under this purchase option only in connection with an authorized assignment of the Schedule.

**THIS PURCHASE OPTION IS MADE A PART OF THE SCHEDULE, WHICH LESSEE HAS REVIEWED AND HEREBY REAFFIRMS, AND WILL BECOME EFFECTIVE ONLY WHEN ACCEPTED IN WRITING BY LESSOR AT ITS OFFICES IN NORCROSS, GEORGIA. LESSEE AGREES THAT LESSEE'S OBLIGATION TO PURCHASE THE EQUIPMENT WILL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE SCHEDULE AS IT INCORPORATES THOSE OF THIS PURCHASE OPTION.**

**Presidio Technology Capital, LLC**

**Kern County Hospital Authority**

By: \_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Name (Type or Print) Date*

By: \_\_\_\_\_ <Sign here  
*Authorized Signature*

Russell Bigler July 19, 2023  
*Name (Type or Print) Date*

NONE OF THE PROVISIONS OF THIS SCHEDULE MAY BE WAIVED OR AMENDED EXCEPT IN A WRITING SIGNED BY LESSEE AND LESSOR.

DATE OF ACCEPTANCE BY LESSOR:

**Kern County Hospital Authority**

Norcross, Georgia

By: \_\_\_\_\_ <Sign here  
*Authorized Signature*





# PRESIDIO<sup>®</sup>

## TECHNOLOGY CAPITAL

**STN:** 682210  
**Legal Name:** Kern County Hospital Authority  
**Install Site Address:** 1700 Mt. Vernon Avenue, Bakersfield, CA 93306-4018  
**Payment Amount:** \$110,893.55

Item #	Qty	Type/Model	Description
1	1	HX-M6-MLB	HX/HXAF/EDG M6 MLB
2	3	HXAF-E-220M6S	Cisco HyperFlex All Flash Edge 220 M6 system
3	3	CON-5SSNP-HXAFE26S	5Y SOLN SUPP 24X7X4 Cisco HyperFlex All Flash Edge 220 M6 sy
4	3	HX-SAS-220M6	Cisco 12G SAS HBA for (16 drives) w/1U Brkt
5	18	HX-SD19T6S1X-EV	1.9TB 2.5 inch Enterprise Value 6G SATA SSD
6	3	HX-SD800GK3X-EP	800GB 2.5in Enterprise Performance 12G SAS SSD(3X endurance)
7	3	HX-SD240GM1X-EV	240GB 2.5 inch Enterprise Value 6G SATA SSD
8	3	HX-M2-240GB	240GB SATA M.2
9	3	HX-M2-HWRAID	Cisco Boot optimized M.2 Raid controller
10	3	HX-RAIL-M6	Ball Bearing Rail Kit for C220 & C240 M6 rack servers
11	3	HX-CMA-C220M6	Reversible CMA for C220 M6 ball bearing rail kit
12	3	UCSX-TPM-OPT-OUT	OPT OUT, TPM 2.0, TCG, FIPS140-2, CC EAL4+ Certified
13	6	UCSC-HSLP-M6	Heatsink for 1U/2U LFF/SFF GPU SKU
14	3	CBL-SAS-C220M6	C220M6 SAS cable (1U); (Pismo HBA)
15	6	UCSC-BBLKD-S2	UCS C-Series M5 SFF drive blanking panel
16	48	UCS-DIMM-BLK	UCS DIMM Blanks
17	3	UCSC-R2R3-C220M6	C220 / C225 M6 UCSC -HH Riser2 and Riser 3 KIT
18	3	HXAF220C-BZL-M5S	HXAF220C M5 Security Bezel
19	6	HX-CPU-I5317	Intel 5317 3.0GHz/150W 12C/18MB DDR4 2933MHz
20	48	HX-MR-X16G1RW	16GB RDIMM SRx4 3200 (8Gb)
21	3	HX-E-TOPO4	10GbE Single or Dual Switch (2, 3, or 4 node)
22	3	HX-M-V25-04	Cisco UCS VIC 1467 quad port 25G SFP28 mLOM
23	6	HX-PSU1-1600W	Cisco UCS 1600W AC Power Supply for Rack Server Platinum
24	6	CAB-C13-CBN	Cabinet Jumper Power Cord, 250 VAC 10A, C14-C13 Connectors
25	3	HX-VSP-7-0-FND2-D	Factory Installed -vSphere SW 7.0 2-CPU Enduser provides Lic
26	3	HX-VSP-7-0-FND-DL	Factory Installed - VMware vSphere 7.0 Fnd SW Download
27	1	HXDP-SW	Cisco HyperFlex Data Platform Software
28	1	DC-MGT-SAAS	Cisco Intersight SaaS
29	3	HXDP-E-AD	HyperFlex Data Platform Edge Advantage
30	1	SVS-DCM-SUPT-BAS	Basic Support for DCM
31	3	DC-MGT-SAAS-EST-C	Cisco Intersight SaaS - Essentials
32	1	SVS-DCM-SUPT-BAS	Basic Support for DCM
33	3	DC-MGT-IMCS-1S	IMC Supervisor - Advanced - 1 Server License
34	3	DC-MGT-UCSC-1S	UCS Central Per Server - 1 Server License
35	1	UCSX-M7-MLB	UCSX M7 Modular Server and Chassis MLB
36	2	UCSX-9508-D-U	UCS 9508 Chassis Configured
37	2	CON-OSP-UCSX9958	SNTC-24X7X4OS UCS 9508 Chassis Configured
38	4	UCSX-I9108-100G-D	UCS 9108-100G IFM for 9508 Chassis
39	2	UCSX-CHASSIS-SW-D	Platform SW (Recommended) latest release for X9500 Chassis
40	2	UCSX-9508-CAK-D	UCS 9508 Chassis Accessory Kit
41	4	UCSX-9508-RBLK-D	UCS 9508 Chassis Active Cooling Module (FEM slot)
42	4	UCSX-9508-ACPEM-D	UCS 9508 Chassis Rear AC Power Expansion Module

Initial Here \_\_\_\_\_

Item #	Qty	Type/Model	Description
43	2	UCSX-9508-KEYAC-D	UCS 9508 AC PSU Keying Bracket
44	4	UCSX-9508-FSBK-D	UCS 9508 Chassis Front Node Slot Blank
45	12	UCSX-210C-M7	UCS 210c M7 Compute Node w/o CPU, Memory, Storage, Mezz
46	12	CON-OSP-UCSXM21C	SNTC-24X7X4OS UCS 210c M7 Compute Node w o CPU, Memory
47	12	UCSX-ML-V5D200G-D	Cisco UCS VIC 15231 2x100G mLOM for X Compute Node
48	24	UCSX-M2-240GB-D	240GB 2.5in M.2 SATA Micron G1 SSD
49	12	UCSX-TPM-002C-D	TPM 2.0, TCG, FIPS140-2, CC EAL4+ Certified, for servers
50	12	UCSX-C-SW-LATEST-D	Platform SW (Recommended) latest release XSeries ComputeNode
51	12	UCSX-C-M7-HS-F	UCS X210c M7 Compute Node Front CPU Heat Sink
52	12	UCSX-X10C-FMBK-D	UCS X10c Compute Node Front Mezz Blank
53	12	UCSX-M2-HWRD-FPS	UCSX Front panel with M.2 RAID controller for SATA drives
54	192	UCS-DDR5-BLK	UCS DDR5 DIMM Blanks
55	24	UCSX-CPU-I6442Y	Intel I6442Y 2.6GHz/225W 24C/60MB DDR5 4800MT/s
56	192	UCSX-MRX64G2RE1	64GB DDR5-4800 RDIMM 2Rx4 (16Gb)
57	12	UCS-SID-INFR-UNK-D	Unknown
58	12	UCS-SID-WKL-UNK-D	Unknown
59	12	UCSX-PSU-2800AC-D	UCS 9508 Chassis 2800V AC Dual Voltage PSU Titanium
60	12	CAB-C19-CBN	Cabinet Jumper Power Cord, 250 VAC 16A, C20-C19 Connectors
61	2	UCSX-FI-6536-D-U	Fabric Interconnect 6536 for IMM
62	2	CON-OSP-UCSX00F6	SNTC-24X7X4OS Fabric Interconnect 6536 for IMM
63	2	N10-MGT018-D	UCS Manager v4.2 and Intersight Managed Mode v4.2
64	2	UCS-FI-6500-SW	Perpetual SW License for the 6500 series Fabric Interconnect
65	4	UCS-PSU-6536-AC-D	UCS 6536 Power Supply/AC 1100W PSU - Port Side Exhaust
66	4	CAB-C13-CBN	Cabinet Jumper Power Cord, 250 VAC 10A, C14-C13 Connectors
67	8	QSFP-100G-AOC3M	100GBASE QSFP Active Optical Cable, 3m
68	4	QSFP-100G-AOC5M	100GBASE QSFP Active Optical Cable, 5m
69	4	DS-SFP-4X32G-SW	4X 32G Optic SFP+ for Ethernet to Fibre Channel connectivity
70	2	UCS-ACC-6536-D	UCS 6536 Chassis Accessory Kit
71	12	UCS-FAN-6536-D	UCS 6536 Fan Module
72	1	DC-MGT-SAAS	Cisco Intersight SaaS
73	12	DC-MGT-IS-SAAS-ES	Infrastructure Services SaaS/CVA - Essentials
74	1	SVS-DCM-SUPT-BAS	Basic Support for DCM
75	12	DC-MGT-UCSC-1S	UCS Central Per Server - 1 Server License
76	2	BE7H-M6-K9	Cisco Business Edition 7000H (M6) Appliance, Export Restr SW
77	2	CON-5SSNP-BE7HM6KM	5Y SOLN SUPP 24X7X4 Cisco Business Edition 7000H (M6) Applia
78	4	CAB-N5K6A-NA	Power Cord, 200/240V 6A North America
79	2	VIRT-LIC-NONE	Do not factory-load a virtualization software license
80	2	BE7H-CPU-M6	Intel 6348 2.6GHz/235W 28C/42MB DDR4 3200MHz
81	24	BE7K-RAM-M6-M5	16GB RDIMM SRx4 3200 (8Gb)
82	2	BE7K-RAIDCTRLR-M6	Cisco M6 12G SAS RAID Controller with 4GB FBWC (28 Drives)
83	48	BE7K-DISK-M6	600GB 12G SAS 10K RPM SFF HDD
84	2	BE7K-PCIERISER-M6	C240 M6 Riser1A; (x8;x16x, x8); StBkt; (CPU1)
85	2	BE7K-NIC-M6	Cisco-Intel X710T4LG 4x10 GbE RJ45 PCIe NIC
86	2	BE7K-NIC-M6	Cisco-Intel X710T4LG 4x10 GbE RJ45 PCIe NIC
87	4	BE7K-PSU	Cisco UCS 1050W AC Power Supply for Rack Server
88	2	BE7K-TPM-M6	TPM 2.0, TCG, FIPS140-2, CC EAL4+ Certified, for M6 servers
89	4	N9K-C93180YC-FX	Nexus 9300 with 48p 1/10/25G, 6p 40/100G, MACsec
90	4	CON-5SSNP-N93YCFX	5Y SOLN SUPP 24X7X4 Nexus 9300 with 48p
91	4	MODE-NXOS	Mode selection between ACI and NXOS
92	4	NXK-AF-PE	Dummy PID for Airflow Selection Port-side Exhaust
93	4	NXOS-9.3.3	Nexus 9500, 9300, 3000 Base NX-OS Software Rel 9.3.3
94	4	NXK-ACC-KIT-1RU	Nexus 3K/9K Fixed Accessory Kit, 1RU front and rear removal
95	8	NXA-PAC-500W-PE	Nexus NEBs AC 500W PSU - Port Side Exhaust
96	8	CAB-9K12A-NA	Power Cord, 125VAC 13A NEMA 5-15 Plug, North America

Initial Here \_\_\_\_\_

Item #	Qty	Type/Model	Description
97	16	NXA-FAN-30CFM-F	Nexus Fan, 30CFM, port side exhaust airflow
98	4	C1A1TN9300XF-5Y	DCN Advantage Term N9300 XF, 5Y
99	4	SVS-B-N9K-ADV-XF	EMBEDDED SOLN SUPPORT SWSS FOR ACI NEXUS 9K
100	2	FPR2140-ASA-K9	Cisco Firepower 2140 ASA Appliance, 1U, 1 x NetMod Bay
101	2	CON-SNT-FPR2140K	SNTC-8X5XNBD Cisco Firepower 2140 ASA Appliance, 1U,
102	4	CAB-AC	AC Power Cord (North America), C13, NEMA 5-15P, 2.1m
103	2	SF-F2KASA9.16.2-K9	Cisco ASA 9.16.2 Software for Firepower 2100 appliances
104	2	FPR2K-SSD200	Firepower 2000 Series SSD for FPR-2130/2140
105	2	FPR2K-SLIDE-RAILS	Firepower 2000 Slide Rail Kit
106	2	FPR2K-NM-BLANK	Firepower 2000 Series Network Module Blank Slot Cover
107	2	FPR2100-ASA	Cisco Firepower 2100 Standard ASA License
108	2	FPR2K-FAN	Firepower 2000 Series Fan Tray
109	4	FPR2K-PWR-AC-400	Firepower 2000 Series 400W AC Power Supply
110	2	FPR2K-SSD-BBLKD	Firepower 2000 Series SSD Slot Carrier
111	2500	L-AC-APX-LIC=	Secure Client Premier Term License, Total Unique Users
112	2500	L-AC-APX-5Y-S6	Cisco AnyConnect Apex License, 5YR, 2500-4999 Users
113	4	C9300X-12Y-A	Catalyst 9300X 12x25G Fiber Ports, modular uplink Switch
114	4	CON-5SSNP-C9300X21	5Y SOLN SUPP 24X7X4 Catalyst 9300X 12x25G Fiber Ports, modul
115	4	SC9300UK9-179	Cisco Catalyst 9300 XE 17.9 UNIVERSAL UNIVERSAL
116	4	PWR-C-1-715WAC-P	715W AC 80+ platinum Config 1 Power Supply
117	4	PWR-C-1-715WAC-P/2	715W AC 80+ platinum Config 1 SecondaryPower Supply
118	8	CAB-TA-NA	North America AC Type A Power Cable
119	4	C9300X-NW-A-12	C9300 Network Advantage, 12-port license
120	4	STACK-T1-3M	3M Type 1 Stacking Cable
121	4	CAB-SPWR-150CM	Catalyst Stack Power Cable 150 CM - Upgrade
122	4	SSD-240G	Cisco pluggable USB3.0 SSD storage
123	4	TE-C9K-SW	TE agent for IOSXE on C9K
124	4	C9300X-DNA-12Y-A	C9300 DNA Advantage, Term License
125	4	C9300-DNA-L-A-5Y	DNA Advantage 5 Year License
126	4	PI-LFAS-T	Prime Infrastructure Lifecycle & Assurance Term - Smart Lic
127	4	PI-LFAS-AP-T-5Y	PI Dev Lic for Lifecycle & Assurance Term 5Y
128	4	TE-EMBEDDED-T	Cisco ThousandEyes Enterprise Agent IBN Embedded
129	4	TE-EMBEDDED-T-5Y	ThousandEyes - Enterprise Agents
130	4	C9300X-NM-2C	Catalyst 9300 2 x 40G/100G Network Module QSFP+/QSFP28
131	4	NETWORK-PNP-LIC	Network Plug-n-Play Connect for zero-touch device deployment
132	7	C9300-NM-8X=	Catalyst 9300 8 x 10GE Network Module, spare
133	150	SFP-10G-SR-S=	10GBASE-SR SFP Module, Enterprise-Class
134	6	QSFP-100G-CU1M=	100GBASE-CR4 Passive Copper Cable, 1m
135	4	C9500-48Y4C-A	Catalyst 9500 48-port x 1/10/25G + 4-port 40/100G, Advantage
136	4	CON-5SSNP-C9504YA4	5Y SOLN SUPP 24X7X4 Catalyst 9500 48-port x 1/10/25G + 4-por
137	8	CAB-9K12A-NA	Power Cord, 125VAC 13A NEMA 5-15 Plug, North America
138	4	C9K-PWR-650WAC-R	650W AC Config 4 Power Supply front to back cooling
139	4	C9K-PWR-650WAC-R/2	650W AC Config 4 Power Supply front to back cooling
140	8	C9K-T1-FANTRAY	Catalyst 9500 Type 4 front to back cooling Fan
141	4	C9500-NW-A	C9500 Network Stack, Advantage
142	4	SC9500HUK9-176	Cisco Catalyst 9500H XE.17.6 UNIVERSAL
143	4	C9K-F1-SSD-240G	Cisco pluggable SSD storage
144	4	C9500-DNA-48Y4C-A	C9500 DNA Advantage, Term License
145	4	C9500-DNA-A-5Y	DNA Advantage 5 Year License
146	12	PI-LFAS-T	Prime Infrastructure Lifecycle & Assurance Term - Smart Lic
147	12	PI-LFAS-AP-T-5Y	PI Dev Lic for Lifecycle & Assurance Term 5Y
148	4	NETWORK-PNP-LIC	Network Plug-n-Play Connect for zero-touch device deployment
149	150	GLC-TE=	1000BASE-T SFP transceiver module for Category 5 copper wire
150	150	GLC-SX-MMD=	1000BASE-SX SFP transceiver module, MMF, 850nm, DOM

Initial Here \_\_\_\_\_

Item #	Qty	Type/Model	Description
151	7	C9300-48P-A	Catalyst 9300 48-port PoE+, Network Advantage
152	7	CON-5SSNP-C93004PA	5Y SOLN SUPP 24X7X4 Catalyst 9300 48-port PoE+, Network Adv
153	7	C9300-NW-A-48	C9300 Network Advantage, 48-port license
154	7	SC9300UK9-176	Cisco Catalyst 9300 XE 17.6 UNIVERSAL UNIVERSAL
155	7	PWR-C1-715WAC-P	715W AC 80+ platinum Config 1 Power Supply
156	7	PWR-C1-715WAC-P/2	715W AC 80+ platinum Config 1 SecondaryPower Supply
157	14	CAB-TA-NA	North America AC Type A Power Cable
158	7	SSD-240G	Cisco pluggable USB3.0 SSD storage
159	7	STACK-T1-50CM	50CM Type 1 Stacking Cable
160	7	CAB-SPWR-30CM	Catalyst Stack Power Cable 30 CM
161	7	TE-C9K-SW	TE agent for IOSXE on C9K
162	7	C9300-DNA-A-48	C9300 DNA Advantage, 48-Port Term Licenses
163	7	C9300-DNA-A-48-5Y	C9300 DNA Advantage, 48-Port, 5 Year Term License
164	7	PI-LFAS-T	Prime Infrastructure Lifecycle & Assurance Term - Smart Lic
165	7	PI-LFAS-AP-T-5Y	PI Dev Lic for Lifecycle & Assurance Term 5Y
166	7	D-DNAS-EXT-S-T	Cisco DNA Spaces Extend Term License for Catalyst Switches
167	7	D-DNAS-EXT-S-5Y	Cisco DNA Spaces Extend for Catalyst Switching - 5Year
168	7	TE-EMBEDDED-T	Cisco ThousandEyes Enterprise Agent IBN Embedded
169	7	TE-EMBEDDED-T-5Y	ThousandEyes - Enterprise Agents
170	7	C9300-NM-8X	Catalyst 9300 8 x 10GE Network Module
171	7	NETWORK-PNP-LIC	Network Plug-n-Play Connect for zero-touch device deployment
172	7	C9300-DNA-A-48=	C9300 48P, DNA Adv Lic, Prime Infra LF+AS, ThousandEyes
173	7	C9300-DNA-A-48-5Y	C9300 DNA Advantage, 48-Port, 5 Year Term License
174	5	LIC-MG41-ENT-5Y	Meraki MG41 Enterprise License and Support, 5YR
175	5	MG41E-HW	Meraki MG41 Cellular Gateway External Antennas
176	67	MS250-48FP-HW	Meraki MS250-48FP L3 Stck Cld-Mngd 48x GigE 740W PoE Switch
177	150	MA-SFP-10GB-SR	Meraki 10G Base SR Multi-Mode
178	7	MX105-HW	Meraki MX105 Router/Security Appliance
179	67	MA-CBL-40G-1M	Meraki 40GbE QSFP Cable, 1 Meter
180	50	MA-CBL-40G-3M	Meraki 40GbE QSFP Cable, 3 Meter
181	360	MR56-HW	Meraki MR56 Wi-Fi 6 Indoor AP
182	67	MA-PWR-1025WAC	Meraki 1025WAC PSU
183	60	SMTL3000RM2UCNC	APC Smart-UPS, Lithium-Ion, 3000VA, 120V with SmartConnect Port and Network Card
184	13	SMTL2200RM2UCNC	APC Smart-UPS, Lithium-Ion, 2200VA, 120V with SmartConnect Port and Network Card
185	30	SMTL1500RM3UCNC	APC Smart-UPS Lithium-ion 1500VA Short Depth 120V Network Card
186	2	SMT1500C	APC Smart-UPS 1500VA LCD 120V
187	9	SMT750C	APC Smart-UPS 750VA LCD 120V
188	8	SMTL750RM2UC	APC Smart-UPS Li-Ion, Short Depth 750VA
189	8	AP9640	UPS Network Management Card 3 with
190	140	ECO1PH5YFWITELI14	5 YEAR IT EXPERT ENABLED ECO CARE FOR SINGLE-PHASE UPS MEMBERSHIP FOR LITHIUM-ION UPS
191	2	SRYL20K20RMXL T	APC Smart-UPS Modular Ultra 20kW Scalable to 20kW N+1 Redundant, Rackmount, 208/240V
192	2	AP9641	UPS Network Management Card 3 with
193	2	SRYLPD2	APC Backplate Kit w/ Qty. 65-20R for Smart-UPS Modular Ultra SRYL on 2022-1622563-1
194	2	SRYLPD1	APC Backplate Kit w/ Qty. 3 L5-20R for Smart-UPS Modular Ultra SRYL on 2022-1622563-1
195	2	SRYLPD5	APC Backplate Kit w/ Qty. 3 L6-30R for Smart-UPS Modular Ultra SRYL on 2022-1622563-1
196	2	AP8830	Rack PDU 2G, Metered, ZeroU, 20A
197	2	AP7811B	RACK PDU, METERED, 2U, 30A,
198	2	WASSEMUPS-SPL-00	SMART-UPS MODULAR ULTRA START UP AND ASSEMBLY COMBINED SERVICE
199	4	SRYLRMXBP	APC Smart-UPS Modular Ultra External Battery Pack with 4 Battery Modules Rackmount

Initial Here \_\_\_\_\_



Item #	Qty	Type/Model	Description
200	1	SRYLSBP20KP	APC Service Bypass Unit for SRYL, 200/208/230/240V, 125A, MBB, Hardwire Input/Output
201	2	SRYL15K15RMXLT	APC Smart-UPS Modular Ultra 15kW Scalable to 15kW N+1 Redundant, Rackmount, 208/120V on 2022-1646675-1
202	2	WASSEMUPS-SPL-00	SMART-UPS MODULAR ULTRA START UP AND ASSEMBLY COMBINED SERVICE
203	4	SRYLRMXBP	APC Smart-UPS Modular Ultra External Battery Pack with 4 Battery Modules Rackmount
204	1	SRYLSBP20KP	APC Service Bypass Unit for SRYL, 200/208/230/240V, 125A, MBB, Hardwire Input/Output
205	2	AP9641	UPS Network Management Card 3 with
206	1	Veza License	Veza License
207	1	1244	SolarWinds Network Performance Monitor SL2000 (up to 2000 elements) - License with 1st-year Maintenance
208	1	3053	SolarWinds NetFlow Traffic Analyzer Module for SolarWinds Network Performance Monitor SL2000 - License with 1st-year Maintenance
209	1	4100	SolarWinds Network Configuration Manager DL50 (up to 50 nodes) - License with 1st-year Maintenance
210	1	1367	Server & Application Monitor SAM400 (up to 400 nodes) - License with 1st-Year Maintenance
211	1	8801	SolarWinds Storage Resource Monitor SRM50 (up to 50 disks) - License with 1st-Year Maintenance
212	1	14003	SolarWinds Virtualization Manager VM64 (up to 64 sockets) - License with 1st-Year Maintenance
213	1	6002-SW	SolarWinds IP Address Manager IP16000 (up to 16384 IPs) - License with 1st-year Maintenance
214	3	3512	SolarWinds Engineer's Toolset Per Seat License (includes one desktop install & one Web named user) - License with 1st-Year Maintenance
215	1	840036	SolarWinds Network Performance Monitor SL2000 (up to 2000 elements)-Annual Maintenance Renewal
216	1	840041	NETFLOW TRAFFIC ANALY MON SL2000 YR RNWL
217	1	840026	NTWK CONFIG MGR DL50 UP 50 N YR MNT RNWL
218	1	840304	Server & Application Monitor SAM400 (up to 400 nodes)-Annual Maintenance Renewal pricing is for 4 years additional maintenance
219	1	840946	SolarWinds Storage Resource Monitor SRM50 (up to 50 disks)-Annual Maintenance Renewal pricing is for 4 years additional maintenance
220	1	840253	SolarWinds Virtualization Manager VM64 (up to 64 sockets)-Annual Maintenance Renewal
221	1	840023	ORION IP ADDRESS MGR IP16000
222	1	840012	ENGINEERS TOOLSET FOR DT
223	1	Microsoft Corporation LICENSE	Microsoft Corporation LICENSE
224	1	LogZilla License	LogZilla License
225	1	LogZilla Hardware	LogZilla Hardware

Initial Here \_\_\_\_\_



July 13, 2023

---

Presidio Technology Capital, LLC  
2 Sun Court  
Norcross, GA 30092

Re: Master Lease Agreement dated as of July 24, 2018 (the "Master Lease") by and between Presidio Technology Capital, LLC as lessor and Kern County Hospital Authority ("Lessee"), and any/all additional Lease Schedules attached thereto.

Ladies and Gentlemen:

As counsel for Kern County Hospital Authority ("Lessee"), I have examined the Master Lease which has been incorporated by reference into Lease Schedule No. 677980 682210 dated as of July 19, 2023 ("Lease Schedule No. 682210677980") and Lease Schedule No. 682210677980, each between Lessee and Presidio Technology Capital, LLC, as lessor ("Lessor"), the form of the Certificate of Acceptance and Acknowledgment of Assignment (the "Certificate of Acceptance") attached to Lease Schedule No. 682210677980 and the proceedings taken by the governing body of Lessee to authorize on behalf of Lessee the execution and delivery of the Master Lease, Lease Schedule No. 682210677980, the Certificate of Acceptance and other documents related to Lease Schedule No. 682210677980. The Master Lease, Lease Schedule No. 682210677980, and the related Certificate of Acceptance and related documents are herein collectively referred to as the "Lease." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a local unit of government in the State of California and the Lessee has full power and authority to enter into the Lease.
2. The Master Lease and Lease Schedule No. 682210677980 have each been duly authorized and have been duly executed and delivered by Lessee. Assuming authorization, execution and delivery thereof by Lessor, the Master Lease and Lease Schedule No. 682210 677980 constitute the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
3. The Certificate of Acceptance has been duly authorized by Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
4. The Equipment to be leased pursuant to the Lease constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law. Lessor's

remedies affecting the Equipment in the event of a default by Lessee are enforceable under applicable law.

5. Lessee has complied with any applicable public bidding requirements in connection with the Lease and the transactions contemplated thereby.

6. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery or performance by Lessee of the Master Lease or Lease Schedule No. 682210677980 or in any way to contest the validity of the Lease, to contest or question the creation or existence of Lessee or its governing body or the authority or ability of Lessee to execute or deliver the Lease or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin Lessee from annually appropriating sufficient funds to pay the rental payments and other amounts contemplated by the Lease.

7. The resolution adopted by Lessee's governing body authorizing the execution and delivery of the Master Lease, Lease Schedule No. 682210677980, and the Certificate of Acceptance and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.

8. Lessee's name indicated above is its true, correct, and complete legal name.

9. The entering into and performance of the Master Lease, Lease Schedule No. 682210677980 do not, and the execution of a Certificate of Acceptance by Lessee pursuant to Lease Schedule No. 682210 677980 will not, violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment (as such term is defined in the Master Lease) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound.

This opinion is for the sole benefit of, and may be relied upon by, Lessor and any permitted assignee or subassignee of Lessor under the Lease.

Respectfully submitted,



Shannon Hochstein

Hospital Counsel

Kern County Hospital Authority



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

July 19, 2023

**Subject:** Proposed Addendum to Agreement #2987468 (078-2018) with UBEO West, LLC formally known as Ray A Morgan Company

**Recommended Action:** Approve; Authorize Chairman to sign, and the Chief Executive Officer to sign receipt of equipment when delivered

**Summary:**

Kern Medical is requesting your Board approve the proposed Addendum to Agreement 078-2018 with Ubeo West, LLC to combine the current lease with additional needed devices. Due to delays in processing Amendment No. 4 (092-2022) to the Agreement, the lease for additional equipment could not be booked with UBEO West, LLC. This Addendum will consolidate the devices originally approved by your Board on August 17, 2022 along with two additional devices that are now required.

Due to the limited time remaining on our current coterminous lease, Kern Medical asks your Board to approve this proposed Addendum for a separate 11-month term with a cost of \$6550 plus taxes and fees for the additional two devices not included in approved Amendment No. 4.

AGREEMENT	LEASE PAYMENT
1. Original Master Agreement signed 11/14/2018	\$32,196
2. Amendment No. 1 (10619) signed 03/25/19	Updated Equipment Schedule
3. Amendment No. 2 (011-2020) signed 4/15/2020	\$39,244
4. Amendment No. 3 (052-2020) signed 10/21/2020	Equipment Exchange
5. Amendment No. 4 (092-2022) signed 08/17/2022	\$43,017
6. Amendment No. 5 (017-2023) signed 02/22/2023	Updated Equipment Schedule
7. Proposed Addendum	\$43,535

Counsel is unable to approve as to form due to non-standard terms which include no termination without cause and payment of attorney’s fees. Efforts were made to negotiate with the vendor, but to no avail.

Therefore, it is recommended that your Board approve the proposed Addendum to Agreement with Ubeo West, LLC to combine the current lease with additional needed devices Ubeo West, LLC, for a term of eleven (11) months beginning upon receipt of equipment, with an increase in the maximum payable from \$2,348,873 to \$2,355,423, and authorize the Chairman to sign and the Chief Executive Office to accept delivery.



## STATE AND LOCAL GOVERNMENT ADDENDUM (AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY)

Addendum to Agreement # 2987468 and any future supplements/schedules thereto, between **Kern County Hospital Authority**, as Customer ("Customer") and **UBEO West, LLC**, as Lessor. The words "you" and "your" refer to Customer. The words "we" and "us" refer to Lessor. In the event of any conflict between the terms and conditions of the Agreement and this Addendum, the terms and conditions of this Addendum shall control, and in the event of any conflict between the general provisions of this Addendum and any provision of this Addendum that expressly applies to you only if you are a political subdivision, county, city, or school district of specific state ("State-Specific Provision"), then the State Specific Provision shall control.

### 1. The parties wish to amend the above-referenced Agreement by adding the following language:

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER:** You hereby represent and warrant to us that: (i) you have been duly authorized under the Constitution and laws of the applicable jurisdiction and by a resolution or other authority of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (ii) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (iii) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (iv) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (v) you have funds available to pay Payments until the end of your current appropriation period, and you intend to request funds to make Payments in each appropriation period, from now until the end of the term of this Agreement; and (vi) your exact legal name is as set forth on page one of this Agreement.

**INITIAL TERM AND RENEWAL TERM(S):** The term of the Agreement consists of an initial term beginning on the date we pay Supplier and ending at the end of your fiscal year in which we pay Supplier, and a series of renewal terms, each co-extensive with your fiscal year. Except to the extent required by applicable law, if you do not exercise your right to terminate the Agreement under the Non-Appropriation or Renewal paragraph as of the end of any fiscal year, the Agreement will be deemed automatically renewed for the next succeeding renewal term.

An election by you to terminate the Agreement under the Non-Appropriation or Renewal paragraph is not a default.

Notwithstanding anything to the contrary set forth in the Agreement, if we cancel the Agreement following a default by you, we may require that you pay the unpaid balance of Payments under the Agreement through the end of your then-current fiscal year, but we may not require you to pay future Payments due beyond that fiscal year or the anticipated residual value of the Equipment. If we sell the Equipment following a default by you, you will not be responsible for a deficiency, except to the extent of our costs of repossession, moving, storage, repair and sale, and our attorneys' fees and costs.

**NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed either automatically or by mutual ratification, this Agreement shall terminate and you shall not be obligated to make Payments under this Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which Payments have been appropriated or the term of this Agreement has been renewed, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after (i) your failure to appropriate funds sufficient for the payment of the Payments or (ii) to the extent required by applicable law, (a) this Agreement is not renewed or (b) this Agreement is renewed by you (in which event this Agreement shall be mutually ratified and renewed), provided that your failure to give any such notice under clause (i) or (ii) of this sentence shall not operate to extend this Agreement or result in any liability to you.

**SUPPLEMENTS; SEPARATE FINANCINGS:** To the extent applicable, in the event that the parties hereafter mutually agree to execute and deliver any supplement or schedule ("Supplement") under the above-referenced Agreement, such Supplement, as it incorporates the terms and conditions of the Agreement, shall be a separate financing distinct from the Agreement or other Supplements thereto. Without limiting the foregoing, upon the occurrence of an event of default or a non-appropriation event with respect to the Agreement or a Supplement (each, a separate "Contract"), as applicable, we shall have the rights and remedies specified in the Agreement with respect to the Equipment financed and the Payments payable under such Contract, and we shall have no rights or remedies with

respect to Equipment financed or Payments payable under any other Contract unless an event of default or non-appropriation event has also occurred under such other Contract.

### 2. The parties wish to amend the above-referenced Agreement by restating certain language as follows:

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from this Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you are responsible for and shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of this Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions contained in this Agreement, which, with the acceptance certification, is the entire agreement between you and us regarding the Equipment and which supersedes any purchase order, invoice, request for proposal, response or other related document."

Any provision in the Agreement stating that this Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "Unless the purchase option is \$1.00 or \$101.00, you agree to send us written notice at least 30 days before the end of the final renewal term that you want to purchase or return the Equipment, and you agree to so purchase or return the Equipment not later than the end of the final renewal term. If you fail to so purchase or return the Equipment at or before the end of the final renewal term, you shall be a holdover tenant with respect to this Agreement and the Equipment, and this Agreement shall renew on a month-to-month basis under the same terms hereof until the Equipment has been purchased or returned."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement and any supplements hereto. You authorize and ratify our filing of any financing statement(s) and the naming of us on any vehicle title(s) to show our interest."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under this Agreement when due or you fail to perform in accordance with the covenants, terms and conditions of this Agreement; (ii) you make or have made any false statement or misrepresentation to us; or (iii) you dissolve, liquidate, terminate your existence or are in bankruptcy."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.



Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

**3. If your end-of-term option is the purchase of all Equipment for \$1.00 or \$101.00, the following applies:** Unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement; provided, however, that if you are a political subdivision of the State of Colorado, and if your end-of-term option is the purchase of all Equipment for \$1.00 or \$101.00, title to the Equipment shall be in our name, subject to your interest under the Agreement.

**4. With respect to any "Financed Items," the following provisions shall be applicable to such Financed Items:**

This Addendum concerns the granting to you of certain software and/or software license(s) ("Licensed Software"), the purchase by you of certain software components, including but not limited to, software maintenance and/or support ("Products") and/or the purchase by you of certain implementation, integration, training, technical consulting and/or professional services in connection with software ("Services") (collectively, the "Financed Items") from software licensor(s) and/or supplier(s) (collectively, the "Supplier"), all as further described in the agreement(s) between you and Supplier (collectively, the "Product Agreement"). For essential governmental purposes only, you have requested and we have agreed that instead of you paying the fees pursuant to the Product Agreement to Supplier for the Financed Items, we will satisfy your obligation to pay such fees to Supplier, and in consideration thereof, you shall repay the sums advanced by us to Supplier by promptly making certain installment payments to us, which are included in the Payments set forth in the Agreement.

To the extent permitted by law, you grant us a security interest in the license(s), including without limitation, all of your rights in the Licensed Software granted thereunder, the Products, all rights to payment under the Product Agreement, the Financed Items, and all proceeds of the foregoing to secure all amounts you owe us under this Agreement. You authorize and ratify our filing of any financing statement(s) to show our interest.

Ownership of any Licensed Software shall remain with Supplier thereof. All Financed Items shall be provided by a Supplier unrelated to us, and your rights with respect to such Financed Items shall be governed by the Product Agreement between you and Supplier, which shall not be affected by this Agreement. IN NO EVENT SHALL WE HAVE ANY OBLIGATION TO PROVIDE ANY FINANCED ITEMS, AND ANY FAILURE OF SUPPLIER TO PROVIDE ANY FINANCED ITEMS SHALL NOT EXCUSE YOUR OBLIGATIONS TO US IN ANY WAY. YOU HAVE SELECTED SUPPLIER AND THE FINANCED ITEMS BASED UPON YOUR OWN JUDGMENT. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE FINANCED ITEMS. SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF SUPPLIER, AND NOTHING SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATIONS HEREUNDER. YOU WILL MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE FINANCED ITEMS COVERED BY THE PRODUCT AGREEMENT AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR AS TO ANY PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS OR ANY OTHER ISSUE IN REGARD TO THE FINANCED ITEMS. YOU HEREBY WAIVE ANY CLAIM (INCLUDING ANY CLAIM BASED ON STRICT LIABILITY OR ABSOLUTE LIABILITY IN TORT) THAT YOU MAY HAVE AGAINST US FOR ANY LOSS, DAMAGE (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA OR ANY OTHER DAMAGES) OR EXPENSE CAUSED BY THE FINANCED ITEMS COVERED BY THE PRODUCT AGREEMENT OR A TERMINATION OF THE FINANCED ITEMS PURSUANT TO AN EVENT OF DEFAULT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, EXPENSE OR COST.

By signing this Addendum, Customer acknowledges the applicable changes noted above are incorporated by reference into the Agreement. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer. Customer has caused this Addendum to be executed by its duly-authorized officer as of the date below.

**UBEO West, LLC**  
Lessor  
  
Signature  
  
Title Date

**Kern County Hospital Authority**  
Customer  
**X**  
Signature  
Chairman, Board of Governors 07/19/23  
Title Date

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

**Legal Services Department**





# CALIFORNIA JUDICIAL REFERENCE ADDENDUM

**AGREEMENT #**  
**2987468**

Addendum to Agreement # 2987468 and any future supplements/schedules thereto, between Kern County Hospital Authority, as Customer and UBEO West, LLC, as Lessor/Secured Party ("Agreement"). The words "you" and "your" refer to Customer. The words "we," "us" and "our" refer to Lessor/Secured Party.

The parties wish to amend the above-referenced Agreement by adding the following language:

1. Any and all disputes, claims and controversies arising out of, connected with or relating to the Agreement or the transactions contemplated thereby (individually, a "Dispute") that are brought before a forum in which pre-dispute waivers of the right to trial by jury are invalid under applicable law shall be subject to the terms contained in this Addendum in lieu of the jury trial waiver otherwise provided in the Agreement. Disputes may include, without limitation, tort claims, counterclaims, claims brought as class actions, claims arising from schedules, supplements, exhibits or other documents to the Agreement executed in the future, disputes as to whether a matter is subject to judicial reference, or claims concerning any aspect of the past, present or future relationships arising out of or connected with the Agreement.
2. Any and all Disputes shall be heard by a referee and resolved by judicial reference pursuant to California Code of Civil Procedure ("CCCP") §§ 638 et seq. The referee shall be a retired California state court judge or an attorney licensed to practice law in the State of California with at least 10 years' experience practicing commercial law. The parties shall not seek to appoint a referee that may be disqualified pursuant to CCCP §641 or 641.2 without the prior written consent of all parties. If the parties are unable to agree upon a referee within 10 calendar days after one party serves a written notice of intent for judicial reference upon the other parties, then the referee will be selected by the court in accordance with CCCP § 640(b).
3. The referee shall render a written statement of decision and shall conduct the proceedings in accordance with the CCCP, the Rules of Court, and the California Evidence Code, except as otherwise specifically agreed by the parties and approved by the referee. The referee's statement of decision shall set forth findings of fact and conclusions of law. The decision of the referee shall be entered as a judgment in the court in accordance with the provisions of CCCP §§644 and 645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court.
4. Notwithstanding the preceding agreement to submit Disputes to a judicial referee, the parties preserve, without diminution, certain rights and remedies at law or equity and under the Agreement that such parties may employ or exercise freely, either alone or in conjunction with or during a Dispute. Each party shall have and hereby reserves the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (A) all rights to foreclose against any real or personal property or other security by exercising a power of sale granted in the Agreement or under applicable law or by judicial foreclosure and sale, including a proceeding to confirm the sale, (B) all rights of self-help including peaceful occupation of property and collection of rents, setoff, and peaceful possession of property, (C) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and in filing an involuntary bankruptcy proceeding, and (D) when applicable, a judgment by confession of judgment. Preservation of these remedies does not limit the power of a judicial referee to grant similar remedies that may be requested by a party in a Dispute. No provision in the Agreement regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in this Addendum for judicial reference of any Dispute. The parties do not waive any applicable federal or state substantive law except as provided herein.
5. If a Dispute includes multiple claims, some of which are found not subject to this Addendum, the parties shall stay the proceedings of the claims not subject to this Addendum until all other claims are resolved in accordance with this Addendum. If there are Disputes by or against multiple parties, some of which are not subject to this Addendum, the parties shall sever the Disputes subject to this Addendum and resolve them in accordance with this Addendum.
6. During the pendency of any Dispute that is submitted to judicial reference in accordance with this Addendum, each of the parties to such Dispute shall bear equal shares of the fees charged and costs incurred by the referee in performing the services described in this Addendum. The compensation of the referee shall not exceed the prevailing rate for like services. The prevailing party shall be entitled to reasonable court costs and legal fees, including customary attorneys' fees, expert witness fees, paralegal fees, the fees of the referee and other reasonable costs and disbursements charged to the party by its counsel, in such amount as is determined by the referee.
7. In the event of any challenge to the legality or enforceability of this Addendum, the prevailing party shall be entitled to recover the costs and expenses from the non-prevailing party, including reasonable attorneys' fees, incurred by it in connection therewith.
8. THIS ADDENDUM CONSTITUTES A "REFERENCE AGREEMENT" BETWEEN THE PARTIES WITHIN THE MEANING OF AND FOR PURPOSES OF CCCP § 638.

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor/Secured Party to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer. This Addendum may be executed in multiple counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same agreement.

**UBEO West, LLC**

Lessor/Secured Party

Signature

Title

Date

**Kern County Hospital Authority**

Customer

**X**

Signature

Chairman, Board of Governors

Title

07/19/23

Date

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.



# SELF-INSURED ADDENDUM (PROPERTY & LIABILITY)

**AGREEMENT #**

**2987468**

Addendum to Agreement # 2987468, between Kern County Hospital Authority, as Customer and UBEO West, LLC, as Lessor. The words "you" and "your" refer to Customer. The words "we," "us" and "our" refer to Lessor. This Addendum is specific to the aforementioned Agreement # and shall not be incorporated into any future supplements/schedules thereto.

The parties wish to amend the above-referenced Agreement by adding the following language:

This Agreement imposes certain obligations on you with respect to maintaining property and liability insurance on the Equipment to cover risk of loss or damage to such Equipment and any liability caused by or in any way related to the Equipment. You have indicated to us that you will not carry property insurance or liability insurance from an insurance carrier. Rather, you will self-insure for property loss and liability by maintaining sufficient liquid assets and overall financial strength to fully cover such risks of loss, damage and/or liability caused by or in any way related to the Equipment.

You acknowledge and confirm that, notwithstanding the foregoing, you shall remain solely responsible for any and all risk of loss or damage to the Equipment and all liability caused by or in any way related to the Equipment, in accordance with the terms of this Agreement. Furthermore, upon any event of default or if we determine, at our sole discretion, that you do not have sufficient liquid assets or overall financial strength to adequately self-insure for property loss and/or liability, we reserve the right to require you to obtain: (1) a property insurance policy from an insurance carrier in an amount not less than the full replacement value of the Equipment with us named as lender's loss payee; and (2) a commercial general liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as additional insured on the policy.

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

_____	<b>Kern County Hospital Authority</b>	
Lessor	Customer	
_____	<b>X</b>	
Signature	Signature	
_____	Chairman, Board of Governors	07/19/23
Title	Title	Date

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.



Secretary of State  
Amendment to Articles of  
Organization of a  
Limited Liability Company (LLC)

LLC-2



For Office Use Only

**-FILED-**

File No.: BA20220942979

Date Filed: 9/22/2022

Filing Fee - \$30.00

Certification Fee (Optional) - \$5.00

Note: You must file a Statement of Information (Form LLC-12), to change the business address(es) of the LLC or to change the name or address of the LLC's manager(s) and/or agent for service of process, which can be filed online at [bizfileOnline.sos.ca.gov](http://bizfileOnline.sos.ca.gov).

Above Space For Office Use Only

1. **LLC Exact Name** (Enter the exact name on file with the California Secretary of State.)

Ray A. Morgan Company, LLC

2. **LLC 12-Digit Entity (File) Number** (Enter the exact 12-digit Entity (File) Number issued by the California Secretary of State.)

2 0 1 8 3 1 2 1 0 2 1 8

3. **New LLC Name (If Amending)** (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State. The name must contain an LLC identifier such as LLC or L.L.C. "LLC" will be added, if not included.)

UBEO West, I.LC

4. **Management (If Amending)** (Select only one box)

The LLC will be managed by:

One Manager       More than One Manager       All LLC Member(s)

5. **Purpose Statement** (Do not alter Purpose Statement.)

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

6. **Additional Amendment(s)** set forth on attached pages, if any, are incorporated herein by reference and made part of this Form LLC-2. (All attachments should be 8½ x 11, one-sided, legible and clearly marked as an attachment to this form LLC-2.)

**Signature**

By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.

Sign here

James L. Sheffield

Print your name here



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

July 19, 2023

**SUBJECT:** Proposed Software As A Service License Agreement with CareFusion Solutions, LLC d/b/a MedKeeper

**Requested Action:** Approve; Authorize Chairman to sign

**Summary:**

The PharmacyKeeper software is a web-based application for improving key pharmacy operational processes, improving communication, and reducing cleanroom traffic. The software provides a medication workflow system that allows for enhanced safety checks, data collection to support regulatory compliance, and analytics to monitor pharmacy operations. PharmacyKeeper improves patient safety by identifying potential compounding errors and keeps audit records ensuring compliance with Board of Pharmacy regulations. Kern Medical will be billed \$31,591 plus any taxes or fees each year of the five (5) year term of this agreement. This software will be funded in part through the antimicrobial stewardship grant, which has been secured by the Kern Medical Foundation. To secure optimal pricing, Kern Medical is entering into a five-year agreement.

Therefore, it is recommended that your Board approve the Software As A Service License Agreement with Carefusion Solutions, LLC d/b/a MedKeeper for the utilization of the PharmacyKeeper Software in an amount not to exceed \$160,000, effective July 19, 2023 through July 18, 2028, and authorize the Chairman to sign.



165 South Union Blvd  
Suite 950  
Lakewood, CO 80228  
[www.medkeeper.com](http://www.medkeeper.com)  
877.812.0100

## SOFTWARE-AS-A-SERVICE (SAAS) LICENSE AGREEMENT

This software-as-a-service license Agreement ("**Agreement**"), effective as of the last date in the signature block below (the "**Effective Date for the SAAS License Agreement**"), is by and between CareFusion Solutions, LLC d/b/a MedKeeper and its related and affiliated entities, having its principal place of business located at 165 S. Union Blvd., Suite 950, Lakewood, Colorado 80228 ("**Licensor**"), and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center, with offices located at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("**Licensee**").

WHEREAS, Licensor provides access to its software-as-a-service offerings to its customers, which Licensor develops and/or licenses from third parties; and

WHEREAS, Licensee desires to access certain software-as-a-service offerings described herein, and Licensor desires to provide Licensee access to such offerings, subject to the terms and conditions set forth in this Agreement, the terms of which shall be incorporated into each Exhibit A-1 now or hereafter executed pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Definitions.

1.1. "Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise/ownership of more than 50% of the voting securities of a Person.

1.2. "Authorized User" means Licensee's employees, consultants, contractors, and agents who are authorized by Licensee to access and use the Services under the rights granted to Licensee pursuant to this Agreement.

1.3. "Documentation" means any manuals, instructions, or other documents or materials that Licensor makes available to Licensee in any form or medium and which describe the functionality, components, features or requirements of the Services.

1.4. "Facility" means any Licensee facility for which Licensee or its Affiliate has ownership or management control.

1.5. "Law" or "Laws" means federal, state and local statutes, implementing regulations, executive orders, ordinances and case law, including governmental healthcare program statutes, regulations and policies applicable to Licensee.

1.6. "Licensee Systems" means the Licensee's information technology, infrastructure, including computers, software, hardware, databases, electronic systems and networks, whether operated directly by Licensee or through the use of third-party services.

1.7. "Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

1.8. "Purchase Order" means a purchase order for the Services issued by Licensee to Licensor under this Agreement.

1.9. "Services" or "Service" means the software-as-a-service offering described in each Exhibit A-1.

### 2. Grant of License.

2.1. Subject to and conditioned upon Licensee's and its Authorized Users' compliance with the terms and conditions of this Agreement, Licensor hereby grants to Licensee a limited, non-exclusive, non-transferable, non-assignable, and revocable license to use the Services set forth in each Exhibit A-1 during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Licensee's internal use for normal business purposes only.

2.2. Unless as otherwise expressly permitted in this Agreement, Licensee shall not: (i) copy, modify, or create derivative works or improvements of the Services, except that limited excerpts may be copied into another electronic medium for internal use, and Authorized Users may download the Service onto personal digital assistant devices for internal use; (ii) sell, rent, lease, assign, transfer, distribute, sublicense, or otherwise provide access to the Service, or make available to any third party; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services,

in whole or in part; (iv) remove, delete, alter, modify or obscure any proprietary or restrictive notices from any Services or Documentation; or (v) otherwise access or use the Services or Documentation beyond the scope of the authorization granted under this Section 2.

3. Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to any intellectual property rights in or relating to the Services. All right, title and interest in and to the Services are and will remain with Licensor.

4. Licensee Obligations.

4.1. Licensee shall at all times during the Term: (i) set up, maintain, and operate in good repair all Licensee Systems on or through which the Services are accessed or used; (b) provide Licensor personnel with such access to Licensee's premises and Licensee Systems as is necessary for Licensor to perform the Services; and (iii) provide all cooperation and assistance as Licensor may reasonably request to enable Licensor to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2. Hardware. Licensee is solely responsible for maintaining any provided equipment associated with the Services in good repair and condition, and in proper working order, subject to the applicable Exhibit A-1. Licensee is responsible for protecting the equipment from damage of any kind whatsoever and will continue to make payments if any damage occurs. If the equipment is damaged beyond repair, Licensee will immediately notify Licensor or its assigns and will replace the equipment at Licensee's expense with equipment approved by Licensor or its assigns.

5. Fees and Payment.

5.1. License Fee. Licensee shall pay Licensor the License Fee set forth in Exhibit A-1 ("License Fee") in accordance with this Section 5. Invoicing shall commence upon Agreement Effective Date, and continue every twelve (12) months for the annual License Fee during the Term.

5.2. Taxes. All License Fees and other amounts payable by Licensee under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Licensee is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on Licensor's income, unless exempt.

5.3. Payment. Licensee shall pay all License Fees net thirty (30) days from date of invoice, or as otherwise set forth in Exhibit A-1. Upon Licensee's signature of this Agreement, Licensee shall also provide a Purchase Order for the Services, which will be attached to the Agreement.

5.4. Late Payment Licensee shall reimburse Licensor for all reasonable costs incurred by Licensor in collecting any late payments or interest, including attorney's fees, courts costs, and collection agency fees.

6. Term and Termination.

6.1. Term. The term of this Agreement shall commence on the Effective Date of this SAAS License Agreement and will continue as set forth in each Exhibit A-1 (the "Term").

6.2. In the event that Licensee is in material breach of Licensee's obligations under this Agreement, Licensor reserves the right to (a) suspend or terminate Licensee's rights under this Agreement, but not Licensee's obligations, and (b) require Licensee to pay Licensor, on demand, any fees and charges then due, as well as the balance in lump sum of any License Fees due for the remainder of the Term.

7. Confidentiality.

7.1. In connection with this Agreement, each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (the "Receiving Party"). "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential". Without limiting the foregoing, all Documentation is Confidential Information of Licensor and the financial terms and existence of this Agreement are the Confidential Information of each of the parties.

7.2. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving party in connection with this Agreement; (ii) was or becomes generally known by the public other than by the Receiving Party's noncompliance with this Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iv) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information. Licensor is aware that Licensee is a government entity and is subject to the California Public Records Act, Cal.Govt.Code §6250 et seq., the Brown Act, Cal.Govt.Code §54950 et seq., and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

8. Proprietary Rights. Licensee recognizes that Licensor regards the Services and Documentation as its proprietary information and as confidential trade secrets of great value. Licensee agrees not to provide or to otherwise make available in any form the Services or Documentation, or any portion thereof, to any person other than Authorized Users. Licensee further agrees to treat the Services and Documentation with at least the same degree of care with which Licensee would treat their own confidential information and in no event with less care than is reasonable required to protect the confidentiality of the Services and Documentation.

9. Representations and Warranties.

9.1. Licensor warrants that the Services will perform substantially in accordance with the current specifications and Documentation.

9.2. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 9.1, ALL SERVICES ARE PROVIDED "AS IS." LICENSOR AND ITS AFFILIATES SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES WILL MEET LICENSEE'S OR ANY OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE WITH OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. LICENSOR MAKES NO WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY SERVICES, OR TO THE EASE, OR FEASIBILITY OF, INTEGRATION OR IMPLEMENTATION OF THE SERVICES.

10. Indemnification.

10.1. Licensee shall indemnify, defend, and hold harmless Licensor, its Affiliates, directors, officers, representatives, employees, agents, successors and assigns (each, a "**Licensor Indemnitee**") from and against any and all claims, demands, suits, losses, damages, costs, and expenses (including, but not limited to, reasonable attorney's fees) which may arise or result from: (i) any material breach by Licensee of its obligations, covenants, warranties, or representations under this Agreement; (ii) Licensee's (and Licensee's employees, contractors, subcontractors, consultants, representatives or agents) negligence, gross negligence, fraud, criminal acts, or willful misconduct; (iii) claims against Licensor for bodily injury or property damage caused by Licensee or Licensee's agents; and (iv) claims against Licensor from Licensee's agents or employees.

10.2. Licensor shall indemnify, defend, and hold harmless Licensee, its Affiliates, directors, officers, representatives, employees, agents, successors and assigns (each, a "**Licensee Indemnitee**") from and against any and all claims, demands, suits, losses, damages, costs and expenses (including, but not limited to, reasonable attorney's fees) which may arise or result from claims against Licensee that the Services infringe the proprietary rights of any third party, provided that (i) Licensee provides Licensor with prompt notice of any such claim, (ii) Licensor has sole control of all defense and/or settlement of such claim, unless the defense/settlement is detrimental to Licensee in anyway and (iii) Licensee provides Licensor with all reasonable assistance which might be requested in investigating, defending and/or settling such claim.

10.3. Licensor shall not be obligated to indemnify Licensee for a claim of infringement if such infringement is due to the modification, combination or addition of materials not supplied by Licensor, or if such infringement is the result of the use of the Services by Licensee outside the scope of this Agreement. In the event Licensor believes the Services to be infringing, Licensor may, at its sole option (i) obtain the rights for Licensee to continue using the Services; (ii) modify the Services to render it non-infringing; or (iii) replace the Services with a substantially similar service acceptable to Licensee.

11. Limitation of Liability.

11.1. IN NO EVENT WILL THE AGGREGATE LIABILITY OF LICENSOR ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO LICENSOR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. NOTWITHSTANDING ANYTHING THE CONTRARY, LICENSOR'S LIMITATIONS OF LIABILITY SHALL NOT APPLY TO, AFFECT, OR LIMIT: (i) ANY OF LICENSOR'S DUTIES TO INDEMNIFY LICENSEE IN ACCORDANCE WITH THIS AGREEMENT.

11.2. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.3. Liability of Licensor. The liabilities or obligations of Licensee with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Licensee 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)

12. Compliance with Law. Each party shall comply with all applicable laws, standards and regulations relating to the Services.

13. Audits. Licensee agrees to provide Licensor, and any assignee or potential assignee, with such documentation as Licensor may request to evidence Licensee's compliance with its obligations hereunder, including evidence of payment of all applicable taxes, and Licensee's more recent annual financial statement (audited, if available) and its' most current interim financial statements.

14. Miscellaneous.

14.1. Relationship of the parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.

14.2. Publicity/public announcements. Licensee authorizes Licensor to reference Licensee in press releases and other marketing materials.

14.3. Notices. All notices hereunder must be in writing and shall be deemed validly delivered (i) on the date of delivery, if delivered in person or by recognized, professional courier or (ii) on the date received, if sent by overnight express delivery or by First Class United States mail, certified, return receipt requested mail, addressed as follow. Rejection or refusal to accept delivery of any notice, or the inability to deliver any notice because of a changed address of which no notice was given, shall be deemed to be receipt of any such notice:

If to Licensor: CareFusion Solutions, LLC  
Attn: Legal Department  
165 S. Union Blvd., Suite 950  
Lakewood, Colorado 80228

If to Licensee: Kern Medical Center  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306  
Attn: Hossam Gamal, Director of Pharmacy Operations

14.4. Headings. The headings in this Agreement are for reference only and do not affect the interpretation of the Agreement.

14.5. Assignment. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, without Licensor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. No assignment, delegation, or transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section

14.5 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

14.6. Force Majeure. Neither party will be liable to the other party or any other person for any failure or delay in the performance of any obligations under this Agreement (except for any obligations to make payments) due to events or circumstances beyond such party's reasonable control (a "Force Majeure Event"), including but not limited to, strikes, acts of God, flood, fire, earthquake or explosion, storms, governmental actions, war, terrorism, invasion, riot or other civil unrest. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of the Force Majeure Event.

14.7. Amendment. This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both parties. No term or provision will be considered waived by either party unless such waiver is in writing. No waiver granted in connection with a given breach will constitute a waiver of any other, different, or subsequent breach by either party.

14.8. Severability. In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect as if such provision were not a part.

14.9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California without regard to its conflicts of laws provisions.

14.10. Arbitration of Disputes, Injunctive Relief, Attorney Fees. All disputes, controversies, or differences which may arise between the parties in connection with this Agreement, or with respect to the existence or effect of any alleged default or breach of any of its terms, shall be finally resolved by arbitration under the JAMS rules and at the JAMS offices located in Los Angeles, California, USA The arbitration award rendered by the arbitrator shall be final and binding upon the parties here to pursuant to JAMS rules and regulations provided that such awards may be appealed to a court of competent jurisdiction in accordance with the Federal Arbitration Act. If the parties cannot agree on the arbitrator, JAMS shall appoint one to conduct the arbitration. In the event any party wishes to obtain injunctive relief or a temporary restraining order, such party may initiate an action for such relief in a court of law with appropriate and competent jurisdiction and the decision of the court of law with respect to the injunctive relief or temporary restraining order shall be subject to appeal only through the applicable courts of law.

14.11. Government Restricted Use. The Services include commercial technical data and/or computer databases and/or commercial computer software and/or commercial computer software documentation, as applicable, which were developed exclusively at private expense. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose the Services are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995), FAR 52.227-14 (June 1987), FAR 52.227-19 (June 1987) and any applicable agency FAR Supplements, as applicable.

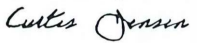
14.12. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

14.13. Entire Agreement. This Agreement, together with any other documents, attachments, exhibits, etc. and the Business Associate Schedule between CareFusion Solutions, LLC's and Licensee dated November 7, 2017 (Licensee Agt.#074-2017) incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the Agreement, exhibits, schedules, attachments, and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference, the following order of precedence governs: (i) this Agreement; and (ii) Exhibit A-1.

Remainder of page intentionally left blank.

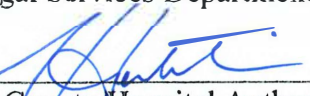


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last signature date below.

**Licensor** DocuSigned by:  
  
By: 4BC460DBC5A64A7...  
Name: Curtis Jensen  
Title: Contract Manager  
Date: 20-Jun-2023

**Kern County Hospital Authority**  
By: \_\_\_\_\_  
Name: Russell Bigler  
Title: Chairman, Board of Governors  
Date: \_\_\_\_\_

APPROVED AS TO FORM  
Legal Services Department

By:   
Kern County Hospital Authority

**EXHIBIT A-1**

**Facility Order Form**

This Facility Order Form ("Order Form") is entered into by and between CareFusion Solutions, LLC and its related and affiliated entities ("Licensor") and Kern Medical Center ("Licensee"), subject to all of the terms and conditions of the License Agreement ("Agreement") set forth above. Capitalized terms used in this Order Form but not defined herein shall have the meanings set forth in the Agreement. This Order Form is effective as of the last signature date below ("Effective Date").

<b>Facility: Kern Medical Center</b>																			
<b>Term</b>	5-Years																		
<b>Licenses and Related Services Included</b>	<b>SaaS Licenses/Services Included</b>																		
	<table border="1"> <thead> <tr> <th style="text-align: left;">Solution Name:</th> <th style="text-align: right;"># of Licenses</th> </tr> </thead> <tbody> <tr> <td>PharmacyKeeper Activities</td> <td style="text-align: right;">1</td> </tr> <tr> <td>PharmacyKeeper Training with TRC Content</td> <td style="text-align: right;">1</td> </tr> <tr> <td>PharmacyKeeper Verification PRO+</td> <td style="text-align: right;">1</td> </tr> <tr> <td>PharmacyKeeper Inspections</td> <td style="text-align: right;">1</td> </tr> </tbody> </table>	Solution Name:	# of Licenses	PharmacyKeeper Activities	1	PharmacyKeeper Training with TRC Content	1	PharmacyKeeper Verification PRO+	1	PharmacyKeeper Inspections	1								
	Solution Name:	# of Licenses																	
	PharmacyKeeper Activities	1																	
	PharmacyKeeper Training with TRC Content	1																	
PharmacyKeeper Verification PRO+	1																		
PharmacyKeeper Inspections	1																		
<b>Fees</b>																			
<b>Payment Schedule</b>																			
<table border="1"> <thead> <tr> <th colspan="6">SaaS License Fee Schedule (Annual Contract Fees - Billable upon Execution and the Anniversary of Execution)</th> </tr> <tr> <th>Year 1</th> <th>Year 2</th> <th>Year 3</th> <th>Year 4</th> <th>Year 5</th> <th>Total Fees</th> </tr> </thead> <tbody> <tr> <td>\$ 31,590.25</td> <td>\$ 31,590.25</td> <td>\$ 31,590.25</td> <td>\$ 31,590.25</td> <td>\$ 31,590.25</td> <td>\$ 157,951.25</td> </tr> </tbody> </table> <p><b>Hardware &amp; Services (Non-Recurring - Billable upon Execution)</b></p> <p>Year 1 \$ - If 'Zero', then Customer Sourcing</p>		SaaS License Fee Schedule (Annual Contract Fees - Billable upon Execution and the Anniversary of Execution)						Year 1	Year 2	Year 3	Year 4	Year 5	Total Fees	\$ 31,590.25	\$ 31,590.25	\$ 31,590.25	\$ 31,590.25	\$ 31,590.25	\$ 157,951.25
SaaS License Fee Schedule (Annual Contract Fees - Billable upon Execution and the Anniversary of Execution)																			
Year 1	Year 2	Year 3	Year 4	Year 5	Total Fees														
\$ 31,590.25	\$ 31,590.25	\$ 31,590.25	\$ 31,590.25	\$ 31,590.25	\$ 157,951.25														
<b>Maintenance Service Information</b>	Telephone Number: 1-877-812-0100 Email: support@medkeeper.com Hours: 24 hours per day, 7 days per week																		
<b>Hardware</b>	No hardware will be provided by Licensor under this Agreement.																		

IN WITNESS WHEREOF, the parties hereto have executed this Order Form as of the last signature date below.

Licensor DocuSigned by:

By: Curtis Jensen  
4BC460D6C5A64A7...

Name: Curtis Jensen

Title: Contract Manager

Date: 20-Jun-2023

**Kern County Hospital Authority**

By: \_\_\_\_\_

Name: Russell Bigler

Title: Chairman, Board of Governors

Date: \_\_\_\_\_



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

July 19, 2023

**SUBJECT:** Proposed Service Agreement with Morrison Management Specialists, Inc., (“Morrison”) for dietary and nutrition services from August, 1, 2023 through July 31, 2028 in an amount not to exceed \$9,800,000

**Requested Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical has partnered with Morrison since 2009 for the provision of management services for the food and nutrition department. Morrison provides management staff, who oversee operations of the food services department, ensuring that the food service department is compliant with regulatory requirements, including the joint commission, that policies are accurate and up to date, and that patient menus are compliant and available for the various diets of Kern Medical’s patients. Morrison also purchases food materials at a discount, passing those savings onto Kern Medical.

In this Agreement, Morrison will provide the following management level positions:

- Director of Food and Nutrition Services
- Executive Chef
- Sous Chef
- Clinical Nutrition Manager
- Patient Services Manager
- Retail Manager
- 5 Registered Dietitian Nutritionists

This agreement contemplates a five-year term, which allows Kern Medical to secure a significant reduction in overall costs and limits the cost increase to 2% per year. Kern Medical will reimburse Morrison for the actual costs of food, paper products, sanitation supplies and other direct expenses. As an offset to the total cost, Morrison collects the proceeds of the cafeteria sales and provides a credit to Kern Medical in the amount of the total gross revenue. Based on the projections of actual cost and offset costs, Kern Medical estimates a not to exceed of \$9,465,712, but with changing food prices Kern Medical is requesting a not to exceed of \$9,800,000 for the five-year term.

Therefore, it is recommended that your Board approve the Service Agreement with Morrison Management Specialists, Inc., for dietary and nutrition services from August, 1, 2023 through July 31, 2028, in an amount not to exceed \$9,800,000, and authorize the Chairman to sign.

**SERVICE AGREEMENT  
BETWEEN  
KERN COUNTY HOSPITAL AUTHORITY  
AND  
MORRISON MANAGEMENT SPECIALISTS, INC.**

---

This SERVICE AGREEMENT (“**Agreement**”) is dated and effective as of August 1, 2023 (the “**Effective Date**”), and is between **KERN COUNTY HOSPITAL AUTHORITY**, a local unit of government, which owns and operates Kern Medical Center (“**Client**”), and **MORRISON MANAGEMENT SPECIALISTS, INC.**, a Georgia corporation (“**Morrison**”). Morrison and Client may at times be individually referred to as a “**Party**” or collectively as the “**Parties**.”

**BACKGROUND**

- A. Morrison has extensive experience providing services to hospitals and other providers in the healthcare market.
- B. Client is a healthcare provider and desires to avail itself of Morrison’s experience in providing these services.
- C. Morrison currently provides food and nutrition services to Client pursuant to that certain agreement between Client and Morrison, dated June 16, 2009 (the “**Prior Agreement**”).
- D. Client and Morrison desire to enter into this Agreement, which will supersede the Prior Agreement in its entirety (unless otherwise identified herein), as of the Effective Date.

ACCORDINGLY, the Parties agree as follows:

1. **SERVICES.**

- (a) **SOW.** Morrison shall render services to Client as identified in a statement of work (each, a “**SOW**”) that is attached or incorporated into this Agreement (“**Services**”). Morrison’s charges for the Services include a rate that is identified in each SOW (each, a “**Rate**”). The Parties’ SOW is attached to this Agreement as Exhibit A.
- (b) **LOCATION.** Morrison shall exclusively perform the Services for Client at each location identified in each SOW (each, a “**Location**”).
- (c) **QBRs.** The Parties shall conduct a business review of the Services through their designated representatives on a quarterly basis (each, a “**QBR**”).

2. **PERSONNEL.**

- (a) **DEFINITIONS.** For this Agreement’s purposes:
  - (i) “**Management Personnel**” means personnel whose job duties include supervising the Non-Supervisory Personnel.

- (ii) “**Non-Supervisory Personnel**” means personnel whose job duties do not include supervising other personnel.
  - (iii) “**Morrison Personnel**” means any Management Personnel and Non-Supervisory Personnel that Morrison is responsible for furnishing under an SOW.
- (b) **RESPONSIBILITIES.** The Parties shall furnish Management Personnel and Non-Supervisory Personnel for each Service in accordance with the SOW applicable to that Service.
- (i) **REMOVAL OF MORRISON PERSONNEL.** Morrison shall replace any Morrison Personnel at the Client’s reasonable written request, if the request does not contravene any Applicable Laws (as defined in Subsection 10(a) below).
  - (ii) **PARTIES ARE NOT JOINT EMPLOYERS.** Neither Party is an employer or a joint employer of any personnel employed by the other Party. Neither Party is a party to any of the other Party’s collective bargaining agreements, nor is a Party required to negotiate a collective bargaining agreement on behalf of the other Party. In addition, each Party is solely responsible for all communications with its own employees relating to collective bargaining negotiations, including the distribution of any written materials.
- (c) **CLIENT’S RULES.** Morrison shall ensure that Morrison Personnel perform their jobs in accordance with the requirements and standards set forth in this Agreement and Client’s policies applicable to third party vendors who provide services on-site, if such policies are provided to Morrison.
- (d) **NON-SOLICITATION.**
- (i) For purposes of this Subsection 2(d):
    - (1) “**Period of Restriction**” means the term of this Agreement plus a period of two years immediately following the expiration or termination of this Agreement; and
    - (2) “**Covered Employee**” means a Party’s current or past salaried, licensed, or certified employee who has performed services in connection with this Agreement, but excludes (A) any employee of a Party who has ceased working for that Party for more than one year at the time the employee is hired by the other Party, or (B) any employee of Morrison who applies for a position with Client that is neither within nor manages (whether directly or indirectly) the Department (as defined in Subsection 1(c)(i) of Exhibit A).
  - (ii) During the Period of Restriction, a Party shall not solicit, offer employment to, or use the services of any of the other Party’s Covered Employees, directly or indirectly, without the other Party’s prior written consent.
  - (iii) If a Party violates this Subsection 2(d), the violating Party shall pay the other Party an amount equal to two years of the solicited Covered Employee’s most recent salary as liquidated damages, and not as a penalty. A Party’s acceptance of this payment for a Covered Employee constitutes that Party’s waiver of any other available remedies to enforce this Subsection 2(d) with respect to that Covered Employee, including injunctive relief.

3. **CLIENT-PROVIDED ITEMS.** Client shall provide Morrison with the following items at each Location at no charge:
  - (a) Access to the facilities and equipment where the Services are to be performed;
  - (b) All utilities necessary to perform the Services;
  - (c) Adequate and appropriate office and storage space, including appropriate office furniture and equipment for such space; and
  - (d) If applicable, dressing rooms, rest rooms and locker facilities.
4. **TERM OF AGREEMENT.** The term of this Agreement commences on the Effective Date and continues until July 31, 2028 (the “**Initial Term**”). Thereafter, this Agreement may be renewed upon the mutual written agreement of the Parties (“**Renewal Terms**”).
5. **TERMINATION OF AGREEMENT.**
  - (a) **TERMINATION FOR CAUSE.** Subject to Morrison’s right to terminate for nonpayment under Subsection 5(b) below, either Party may terminate this Agreement if the other Party materially breaches this Agreement as follows:
    - (i) The non-breaching Party shall provide the other Party with written notice specifying the nature of the breach and its intention to cancel this Agreement if the breach has not been corrected within sixty days following the other Party’s receipt of the written notice (the “**Cure Period**”).
    - (ii) No later than thirty days following the end of the Cure Period, the non-breaching Party shall determine that either:
      - (1) the breach has been corrected, in which case this Agreement continues in full force and effect; or
      - (2) the breach has not been corrected, in which case the non-breaching Party may cancel this Agreement by providing sixty-five days’ further written notice.
    - (iii) If the non-breaching Party does not terminate this Agreement under subparagraph 5(a)(ii)(2) above within thirty days following the end of the Cure Period, the breach is deemed corrected and this Agreement continues in full force and effect thereafter.
  - (b) **TERMINATION FOR NON-PAYMENT.** Morrison may terminate this Agreement upon seven days' prior written notice if Client fails to timely pay any amounts due (subject to Client’s right to cure prior to the end of the seven-day notice period).
  - (c) **TERMINATION FOR CONVENIENCE.** Commencing after the first anniversary of the Effective Date, either Party may terminate this Agreement without cause by providing the other Party with at least ninety (90) days prior written notice of termination.
  - (d) **TERMINATION COOPERATION.** If this Agreement is terminated, Morrison and Client shall cooperate in good faith to achieve an orderly transition of the Services back to Client or Client’s designee.

- (e) **TERMINATION BY SERVICE OR TERMINATION BY LOCATION.** A termination right set forth in Subsection 5(a) or 5(b) above may be applied to a Service or Location without terminating any other Service or Location covered under this Agreement.

**6. INSURANCE COVERAGE.**

- (a) **TYPES OF INSURANCE.** A Party shall procure and maintain the following insurance during the term of this Agreement:

- (i) Workers' Compensation and Employers Liability Insurance with workers' compensation in compliance with the laws of the applicable state where the Services are being performed for the employees on the Party's payroll and employer's liability insurance with a limit of not less than \$500,000 each accident/each employee/policy limit.
- (ii) Property Insurance that adequately insures its real and/or personal property against loss or damage caused by fire and extended coverage perils. Each Party shall waive all rights of recovery it has against the other Party for damage caused by fire and extended coverage perils, including subrogation rights.
- (iii) Commercial General Liability Insurance providing with a minimum limit of liability of \$1,000,000 per occurrence/aggregate.
- (iv) Network Security and Privacy/Cyber Liability Insurance coverage with limits of at least \$1,000,000 per claim and \$1,000,000 in the aggregate.
- (v) Excess Liability Insurance providing excess coverage over the underlying Commercial General Liability and Employers Liability Policies. The minimum limit of liability is \$5,000,000 per occurrence/aggregate.

- (b) **CERTIFICATE OF INSURANCE.** Each Party shall provide a Certificate of Insurance evidencing its insurance coverage upon request of the other Party.

**7. INDEMNITY.**

- (a) **MUTUAL INDEMNIFICATION.** Each Party (the "**Indemnifying Party**") shall indemnify, defend, and hold harmless the other Party (the "**Indemnified Party**") from any third party claim, including a claim brought by a Party's employee, to the extent the claim arises out of the negligent acts or omissions of the Indemnifying Party or its employee while acting within the scope of his or her employment. The Indemnifying Party is not required to indemnify, defend, or hold harmless an Indemnified Party for any claim to the extent that it (i) is excluded under Paragraph 6(a)(ii) above or Subsection 7(b) below, or (ii) arises out of the negligent acts or omissions of the Indemnified Party, its employees, or a third party contracted with the Indemnifying Party.

- (b) **DAMAGES LIMITATIONS.** A Party is not liable to the other Party for any of the following:

- (i) liability for breach of contract that is not based on direct or general damage contract principles, such as consequential/special damages (e.g., loss of use, business and reputation, financing, etc.), or punitive damages;



- (ii) liability resulting from its performance or nonperformance under this Agreement greater than \$1,000,000 in the aggregate for all claims, excluding Client's financial obligation to make payment under an SOW and the Parties duty to indemnify; or
- (iii) any claim not presented within one year following the date of termination of this Agreement.
- (c) **LIABILITY OF CLIENT.** The liabilities or obligations of Client with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Client 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).

**8. DISPUTE RESOLUTION.**

- (a) **GENERALLY.** If a dispute arises concerning this Agreement, either Party may provide notice to the other Party of the existence and nature of the dispute. Each Party shall refer the dispute to its designated representative to resolve it. If the parties' designated representatives cannot resolve the dispute within five days, either Party may demand in writing that the dispute be submitted to senior executives for resolution. Immediately following a Party's receipt of such a demand, each Party shall designate a senior executive with authority to resolve the dispute. The Parties' designated senior executives shall begin discussions promptly in an effort to agree upon a resolution. If the senior executives do not agree upon a resolution of the dispute within seven days following the date that such demand was made, then either Party may elect to abandon executive discussions and resort to any and all applicable legal remedies. Any dispute resolved under this Subsection 8(a) will be reported in writing and will be binding on the Parties.
- (b) **INVOICE DISPUTES.** If Client has a dispute regarding an amount due under this Agreement, then Client shall provide Morrison with a written explanation of the dispute in writing within thirty days following the date of the disputed invoice. Client remains obligated to pay any undisputed portion of a disputed invoice. Morrison shall not charge interest on any item in dispute for a period of sixty days after receiving Client's written explanation of the dispute.

9. **AUDITING.** Morrison shall maintain accurate records in connection with its provision of Services. Morrison shall retain these records for a period of four years, and make them available to Client to the extent necessary to confirm that Morrison's charges and Services are consistent with the terms of this Agreement. Client may, by providing two business days' prior written notice, audit Morrison's relevant records at the location where Morrison maintains such records (or another location if mutually agreed upon by the Parties in writing). These audits may take place at any time during regular business hours, but can be conducted no more than once per calendar year.

**10. COMPLIANCE.**

- (a) **APPLICABLE LAWS.** Each Party shall comply with all Applicable Laws. "**Applicable Laws**" means federal, state, and local statutes, regulations, ordinances, and other related legal requirements, including payment card industry data security standards (PCI-DSS) related to the protection of cardholder data, to the extent they are applicable to the Services.
- (b) **OTHER STANDARDS AND POLICIES.** Morrison shall perform the Services in a manner that is consistent with:

- (i) any standards applicable to the Services that The Joint Commission has promulgated; and
  - (ii) Morrison's policies and procedures that are applicable to Morrison's performance of the Services.
- (c) **CLIENT'S FACILITIES.** Client shall pay for any improvements, repairs, or replacements that are necessary to bring each Location's facilities into compliance with Applicable Laws. Morrison is not obligated to assume any cost associated with bringing Client's facilities into regulatory compliance or to develop policies and procedures for Client as it pertains to Applicable Laws where Client, its policies and procedures, Location, or equipment are not in compliance. Client recognizes its obligation to identify the presence of any environmental hazards that pose an unreasonable health risk to employees working at a Location, and to take any action required by Applicable Laws to communicate the presence of such hazards and take appropriate remedial action. Client and Morrison shall cooperate with each other and work together to identify and train Management Personnel and Non-Supervisory Personnel with respect to any such environmental hazards.
- (d) **COST REPORTING.** With regard to any fees, discounts, commissions, charges, donations or investments that are provided to Client, Client is solely responsible for any cost reporting or other compliance with state or federal agencies under Medicare/Medicaid programs.
- (e) **UNLAWFUL DISCRIMINATION.** A Party shall not discriminate in an unlawful manner. Client shall make any changes necessary to the physical facility to comply with the Americans with Disabilities Act at its expense. **The Parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that the Parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, protected veteran status or disability. Further, the Parties agree to comply with 29 CFR Part 471, Appendix A to Subpart A.**
- (f) **HIPAA.** The Parties shall enter into a mutually agreed upon Business Associate Agreement if Client determines that Morrison is a "business associate" of Client as that term is defined by the Health Insurance Portability and Accountability Act, as amended.
- (g) **INFORMATION TECHNOLOGY SYSTEMS.** In connection with the Services, Morrison may need to operate certain information technology systems it furnishes ("**Morrison Systems**"), which may need to connect to or interface with internet access, networks, software, or information technology systems that the Client furnishes ("**Client Systems**"). Morrison is solely responsible for all Morrison Systems, and Client is solely responsible for all Client Systems. Each Party shall take any necessary security and privacy protections that are reasonable under the circumstances with respect to its information technology systems. If Morrison Systems connect to or interface with Client Systems, then Client agrees to promptly implement upon request from Morrison, at Client's expense, the changes to the Client Systems that Morrison reasonably requests and believes are necessary or prudent to ensure Morrison's compliance with Applicable Laws.

## 11. CONFIDENTIALITY.

- (a) **PROPRIETARY INFORMATION DEFINED. “Proprietary Information”** means:
- (i) trade secrets and other confidential information related to the business of Morrison or Client or their respective affiliates in any form; and
  - (ii) the terms and conditions of this Agreement.
- (b) **PRECAUTIONS.** The Party receiving Proprietary Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”), shall take reasonable precautions to safeguard the confidential nature of the Proprietary Information. The Receiving Party shall not use any of the Disclosing Party’s Proprietary Information without the Disclosing Party’s prior written consent.
- (c) **PROTECTION OF PROPRIETARY INFORMATION.** The Disclosing Party may disclose Proprietary Information to the Receiving Party in connection with this Agreement. If the Receiving Party receives Proprietary Information from the Disclosing Party, the Receiving Party shall, during the term of this Agreement and for a period of five years following the date of termination of this Agreement, maintain the Proprietary Information in strict confidence, and shall not disclose the Disclosing Party’s Proprietary Information to third parties except to fulfill obligations under this Agreement. The Receiving Party shall use reasonable care to protect any Proprietary Information it receives from the Disclosing Party. The Receiving Party shall return or destroy the Disclosing Party’s Proprietary Information promptly following receipt of notice from the Disclosing Party.
- (d) **LIMITATION ON CONFIDENTIALITY OBLIGATION.** The Receiving Party is not required to keep confidential information that:
- (i) was known to the Receiving Party before receipt, directly or indirectly, from the Disclosing Party;
  - (ii) is lawfully obtained, directly or indirectly, by the Receiving Party, from anyone, under no obligation of confidentiality;
  - (iii) is or becomes publicly available other than as a result of an act or failure to act by the Receiving Party;
  - (iv) is approved for release in writing by the Disclosing Party; or
  - (v) is required by law, court order, or judicial process to be disclosed.

Nothing in this Agreement is intended in any way to prohibit the Disclosing Party from seeking injunctive relief or other equitable or legal remedy to protect against the release of its Proprietary Information even if such disclosure is required by court order or a ruling by a governmental agency or department or accreditation body. Morrison is aware that Client is a government entity and is subject to the California Public Records Act, Cal.Govt.Code §6250 et seq., the Brown Act, Cal.Govt.Code §54950 et seq., and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation. If Client receives a public records request that includes disclosing information that would otherwise be considered Proprietary and Confidential under this Agreement, Client

shall, to the extent permitted under the foregoing laws, notify Morrison of said request and provide Morrison with an opportunity to limit said disclosure as Applicable Law permits. Morrison is aware that under the Brown Act, this Agreement will become public record in order to be approved by Client's Board of Governors.

- (e) **USE OF CLIENT DATA.** As between Client and Morrison, any data provided to or learned by Morrison in connection with the provision of the Services is the property of Client. However, Morrison is authorized to use or disclose to its vendors or customers any data received from Client or learned by Morrison in connection with the provision of the Services for the purpose of statistical compilations and benchmarking, if Morrison first de-identifies it by removing any identifying characters such as names, addresses, URL, e-mail addresses, or similar information which may be used to identify Client.
- (f) **THIRD PARTY PATIENT SATISFACTION PROVIDERS.** If Client utilizes the services of a third party to measure patient satisfaction with regard to any Services, Client agrees to take any action necessary to ensure that Morrison is able to obtain any data related to the Services directly from the third party provider.

12. **PURCHASING.** Morrison has exclusive rights and discretion to purchase through its vendors any items it is responsible for providing under this Agreement including, but not limited to, food, beverages, equipment, and other supplies ("**Purchased Items**"). Client acknowledges that Morrison may receive credits, trade or cash discounts, volume allowances, and/or rebates ("**Allowances**") for Purchased Items and those Allowances will accrue to and be retained by Morrison and will not be credited back to Client. Client acknowledges that financial terms offered to Client under this Agreement rely on Morrison's right to exclusively select vendors for the Purchased Items in all categories and any changes to Morrison's rights under this provision will result in a change to the financial terms or operational guarantees of the Agreement.

13. **MISCELLANEOUS.**

- (a) **INDEPENDENT CONTRACTOR.** Morrison agrees that in all aspects its relationship to Client will be that of an independent contractor, and that Morrison will not act or represent that it is acting as an agent of Client or incur any obligation on the part of Client without written authority of Client.
- (b) **ASSIGNMENT/DELEGATION.** Either Party may assign its rights and delegate its duties under this Agreement to a parent company, affiliate or subsidiary without the other Party's written consent; provided advance written notice is provided. This Agreement is binding upon and inures to the benefit of the successors and permitted assigns of the Parties.
  - (i) **DIVESTITURE.** If Client desires to assign this Agreement (whether in whole or in part) in connection with the divestiture of a Location, Client shall notify Morrison and the Parties shall negotiate in good faith and mutually agree upon any adjustments to the affected Rate, Services, and financial and performance guarantees for the affected Location prior to the effective date of such assignment.
  - (ii) **CHANGE IN CONTROL.** If Client experiences a change in control of its ownership, Client shall ensure the buyer assumes Client's obligations under this Agreement.
- (c) **MODIFICATION; COUNTERPARTS; ELECTRONIC SIGNATURES.** The terms of this Agreement may not be amended or modified except by a further written statement signed by the Parties





SOW does not constitute Morrison sharing in the net profits or losses of the Client's facilities for tax-exempt bond purposes; and

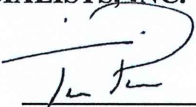
- (2) Morrison's ability to make any investment into fixtures at a Location is contingent on Client permitting Morrison to claim all depreciation on that investment; if Client determines that doing so results in Morrison taking a tax position that is inconsistent with its role as a Morrison for tax-exempt bond purposes, Morrison will not be able to make that investment.

As evidence of their agreement, the Parties have executed this Agreement by their authorized representatives as of the Effective Date.

**KERN COUNTY HOSPITAL AUTHORITY**

**MORRISON MANAGEMENT SPECIALISTS, INC.**

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: \_\_\_\_\_

Name: Tim Pierce


Title: \_\_\_\_\_

Title: CEO, Morrison Healthcare

Approved As To Content:  
Kern Medical

By \_\_\_\_\_  
Scott Thygerson  
Chief Executive Officer

Approved As To Form:  
Legal Services Department

By  \_\_\_\_\_  
Shannon Hochstein  
Hospital Counsel



## EXHIBIT A STATEMENT OF WORK

1. **SERVICES.** Morrison will provide the Services identified in the table below (indicated by placing an “x” in the appropriate space):

Service	
Food and Nutrition Services	<input checked="" type="checkbox"/>

- (a) **LOCATIONS.** Morrison will exclusively provide the Services at the following locations:

Location	Address
Kern Medical Center	1700 Mount Vernon Ave, Bakersfield, CA 93306
Kern Medical Center Columbus Clinics	1111 Columbus Street, Bakersfield, CA 93305

- (b) **PERSONNEL.**

- (i) **DEFINITIONS.** For this SOW’s purposes:

- (1) **“Fringe Rate”** means a percentage rate of Wages and Salaries to cover payroll taxes, workers’ compensation insurance, the employer’s portion of state and federal unemployment compensation tax, social security tax, accident and health insurance, life insurance and retirement plan contributions, legal and administrative costs, and fringe benefits.
- (2) **“Wages and Salaries”** includes regular pay, incentive pay, vacation pay, sick pay, bereavement leave, and legal holiday pay.

- (ii) **MANAGEMENT PERSONNEL.** Morrison will furnish the Management Personnel, including dietitians, to manage the Services. Morrison shall charge Client for the Wages and Salaries it incurs for these Management Personnel, including the applicable Fringe Rate, in accordance with Subsection 2(a) below. A table of the Management Personnel is set forth below and a sample organizational chart of the Management Personnel is attached hereto in Schedule 1.

Management Personnel	Number of Management Personnel
Managers	6
Registered Dietitians	5

- (iii) **NON-SUPERVISORY PERSONNEL.** Client will furnish the Non-Supervisory Personnel, including paid hourly supervisors, to perform the Services at the Location. All expenses in connection with the Non-Supervisory Personnel shall be paid by Client.
- (iv) **PRE-EMPLOYMENT SCREENINGS.** Morrison’s pre-employment policies, including its background check policy, are set forth below.

- (1) Social Security Number Verification;

- (2) Felony including Misdemeanor (single index search) – 7 years, 1 county seat with the county search determined on the residential address submitted;
  - (3) Sex Offender Registry – National;
  - (4) LN National Criminal File;
  - (5) For non-dietitians, Fraud and Abuse Control – Level 1: containing historical information from Federal agencies, such as OIG/GSA, FDA, DEA, and Tri-Care; and
  - (6) For dietitians, Fraud and Abuse Control – Level 3: containing historical information from Federal agencies, such as OIG/GSA, FDA, DEA, and Tri-Care.
  - (7) Morrison will perform the foregoing criminal background checks on the Morrison Personnel before assigning such employees to begin operations at Client's Location(s). The background check will be conducted in compliance with all federal, state, and municipal laws, including in compliance with the EEOC Guidelines on making eligibility determinations. Morrison will review all background check results on a case-by-case basis to ensure the safety and welfare of Client, including its patients, visitors, and other contractors who are present at the Location(s). Morrison's determination regarding who is ineligible for work at the Location(s) will be job related and consistent with business necessity. Recognizing what is consistent with business necessity at Client's Location(s) based on the Services hereunder, Morrison will closely examine all convictions and arrests for violent, sexual, or integrity related crimes.
  - (8) The Morrison Personnel will also be required to meet Client's onboarding requirements and attend Client's new hire orientation.
- (v) **PROVISION OF FTES.** If Client is responsible for providing the Non-Supervisory Personnel at a Location and the number of Non-Supervisory Personnel available to carry out the Services at that Location falls below the FTEs required to perform such Service for four or more consecutive weeks, Morrison shall, upon Client's approval, fill the vacancies with Morrison or temporary staff at Client's expense. The expense so incurred will be reimbursed by Client at a charge per hour equal to the cost incurred by Morrison for employees on Morrison's payroll (i.e., Wages and Salaries plus the applicable Fringe Rate) or the cost incurred by Morrison to retain temporary staff from a third party based on the Invoice Price (as defined in Subsection 4(b) below).
- (c) **CLIENT FACILITIES.**
- (i) Client shall equip and furnish the Food and Nutrition Services Department at each Location (each a "**Department**") to the Parties' reasonable satisfaction. Client shall ensure that each Department (including the kitchen) is in good, clean, sanitary, working condition, as of the Effective Date.
  - (ii) Cleaning responsibilities are as follows (an "x" under FNS Department is the responsibility of Morrison; an "x" under Client is the responsibility of Client):

<b><u>Kitchen</u></b>	<b><u>FNS Department</u></b>	<b><u>Client</u></b>
Floors	X	
Walls	X	
Equipment	X	
Refrigerators and freezers	X	
Vents		X
Ceiling		X
Duct work		X
Light replacement		X
<b><u>Storage Areas for Program</u></b>		
Floors	X	
Walls	X	
Ceiling		X
Shelving	X	
<b><u>Cafeteria</u></b>		
Serving line/equipment	X	
Serving line walls	X	
Serving line floors (customer side)		X
Serving line floors (kitchen side)	X	
Ceiling		X
<b><u>Dining Area</u></b>		
Furniture	X	
Equipment	X	
Floors/carpet		X
Windows/walls		X
Ceiling		X
Draperies		X
<b><u>Floor Stations/Pantries</u></b>		
Equipment		X
Floors		X
Walls/ceilings		X
<b><u>Receiving Area for Program</u></b>		
Pick-up/spot mop	X	
Daily cleaning		X

(d) INVENTORIES.

- (i) The Parties jointly prepared an inventory of food and dietary supplies for the Location, which had the dollar value of \$39,247.57, as of Effective Date, and which was based upon the purchase prices at the start of Morrison’s Services at the Location (each, a “**Beginning Inventory**”). If the FNS Services at a Location terminate, the Parties shall jointly prepare an ending inventory of such food and dietary supplies for that Location with a dollar value based upon then-current purchase prices (each, a “**Ending Inventory**”) on or before the date of termination. If the aggregate value of the Ending Inventory is less than the Beginning Inventory for that Location, then Morrison shall credit Client the difference on its final invoice for the Location. If the aggregate value of the Ending Inventory for a Location is greater than the Beginning Inventory for that Location, then Client shall pay Morrison the difference on Morrison’s final invoice for the Location.

(ii) Client shall provide a fully adequate initial inventory and supply of Tablewares and Smallwares as defined below for satisfactory operating requirements, in Morrison's opinion, at Client's expense at the start of this Agreement. Thereafter, Morrison shall replace lost or damaged Tablewares or Smallwares and furnish additional Tablewares and Smallwares if needed. Morrison shall charge Client for the cost of these Tablewares and Smallwares. “**Smallwares**” means non-powered kitchen related items used to prepare and serve food, such as pots, pans, scoops, chef knives, cutting boards, bowls, cooking and kitchen utensils, and similar loose items. “**Tablewares**” means items used by individuals in consuming food, such as china, dishware, silverware, flatware, table utensils, and glassware.

(iii) Morrison shall charge Client for food and supplies monthly based on the amount of inventory Morrison uses each month.

(e) **RETAIL OPERATIONS.**

(i) As a part of the Services, Morrison has the exclusive right to operate all retail foodservice areas at a Location with the exception of those certain areas operated by Client’s Auxiliary (each, a “**Retail Foodservice Area**”).

(ii) Client owns the point of sale system (hardware only) for each Retail Foodservice Area, while Morrison owns the point of sale software (the “**POS System**”). Additionally, Morrison is using its merchant identification number for payment processing, and Client has provided the encryption hardware or software (for interfacing) related to the encryption of such payment processors. Client shall pay the cost of replacing or upgrading the POS System, either directly or by way of reimbursement to Morrison.

(f) **ALCOHOL.** Morrison will not serve alcohol in connection with the Services.

2. **FINANCIAL TERMS.**

(a) **PAYMENT TERMS.**

(i) On the first day of each month, Morrison shall issue an initial invoice (the “**Initial Invoice**”) to Client in the amounts identified below for each Location, which is the monthly amount of the projected charges due under the terms of this SOW. The amount of the Initial Invoice is subject to adjustment on each anniversary of the Effective Date to account for increases or decreases in Morrison’s projected charges.

Location	Initial Invoice Amount
Kern Medical Center	\$224,138

(ii) After the conclusion of each month, Morrison shall issue a reconciliation invoice (the “**Reconciliation Invoice**”) to Client that identifies the actual charges and credits that are due under the terms of this Agreement (net of any amounts paid by Client in connection with the Initial Invoice for the month being reconciled).

(iii) Client shall pay each Morrison invoice no later than forty-five (45) days following the date of the invoice directly into an account designated by Morrison for such purpose.

Client shall have adequate controls in place to approve and reconcile statements/invoices presented for payment by Morrison.

(b) **FINANCIAL MODEL.** Client shall compensate Morrison for providing the FNS Services as follows and in accordance with Schedule 2(b), attached hereto.

(i) **LABOR EXPENSES; FEES; INCENTIVE PAY.** For the period August 1, 2023 through July 31, 2028, Morrison's charges to Client for Labor Expenses (defined below), Morrison's Fees (defined below), and Morrison's incentives earned in accordance with Section 5 of the is Exhibit A will not exceed \$6,462,867.

(A) **VACANCIES.** If Morrison has a vacancy with the Management Personnel at a Location, Morrison shall promptly take reasonable action to fill that vacancy on a permanent basis as expeditiously as possible. In the interim, Morrison will be entitled to place a qualified interim manager on a temporary basis to fill the vacant position. If Morrison is unable to fill said vacancy on either a permanent basis or with a qualified interim manager after the vacancy occurred, then Morrison shall provide a credit on its next invoice for the full amount (if the position was vacant for an entire month) or prorated amount (if the position was vacant for a partial month) of the Wages and Salaries for the Management Personnel position that is vacant, and each month thereafter until the position is filled.

(ii) **SUMMARY OF COSTS.** For the period August 1, 2023 through July 31, 2028, Morrison's charges to Client for Net Charges shall not exceed \$9,465,712. If Morrison's Net Charges (defined below) during a contract year exceed 80% of the total Net Charge amount identified in Schedule 2(b) for that contract year, Morrison shall notify Client 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. 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 Schedule 2(b)), Morrison may terminate this Agreement immediately upon written notice to Client.

(iii) **DEFINITIONS.** For purposes of the FNS Services:

(1) **"Labor Expenses"** are Morrison's Wages and Salaries and Fringe Rates for the Morrison Personnel providing the FNS Services. Morrison's Fringe Rate for the Management Personnel providing FNS Services is 37%. The Fringe Rate is subject to the following increases:

(A) an annual increase each year that this Agreement is in effect on each anniversary of the Effective Date. The amount of the increase (unless otherwise mutually agreed upon by the Parties) is based on the lesser of: (1) two percent (2%), or (2) the percentage increase in the Employment Cost Index, Private Industry, Total Benefits, 12-Month Percent Change, Not Seasonally Adjusted – CIU2030000000000A as published by the United States Department of Labor, Bureau of Labor Statistics (the **"ECI Benefits Index"**) for the previous twelve-month period. If the ECI Benefits Index decreases over the previous twelve-month period, then the applicable rates remain the same; and

(B) an increase in Morrison’s costs due to (A) a change to existing or new federal, state or local payroll taxes (including changes to any payroll based taxes or withholdings such as FICA, SUI and FUI); (B) a change related to unionization of employees performing Services (whether an initial collective bargaining agreement, amendments to an existing collective bargaining agreement, or the negotiation of a subsequent, successor collective bargaining agreement); or (C) new or additional fees, taxes, assessments or other charges or costs incurred by Morrison arising out of changes to existing or new federal, state or local legislation or legal requirements related to Morrison’s employees. Morrison’s Fringe Rates will be increased to account for the change in such costs effective from the date such changes impose additional costs on Morrison.

(2) “**Net Charges**” include, but are not limited to, all food, beverages, and paper and sanitation supplies related to the FNS Services (i.e., COGs); Smallwares; Tablewares; and all other expenses Morrison incurs for the items Morrison provides pursuant Section 4 of this Exhibit A, less the net sales revenues received by Morrison from each Retail Foodservice Area (subject to Subsection 2(c) below).

(3) “**Fees**” are Morrison’s combined annual management fee and general/administrative charges set forth in the chart below for the Location, which Client shall pay in equal, consecutive monthly installments over each respective annual period. Morrison’s Fees are included in the Initial Invoice amount identified in Subsection 2(a)(i) above and are subject to adjust annually on each anniversary of the Effective Date by the lesser of: (A) two percent (2%), or (B) the annual price escalator obtained from the Consumer Price Index for All Urban Consumers, U.S. City Average, “Food Away From Home,” Series Id: CUUR0000SEFV (Not Seasonally Adjusted) as measured against the most recently published twelve-month period. Should the applicable inflation rate over the most recently published twelve-month period decrease, Morrison’s Fees shall not change from the previous year.

Annual Period	Annual Fees
August 1, 2023 through July 31, 2024	\$197,003
August 1, 2024 through July 31, 2025	\$200,943
August 1, 2025 through July 31, 2026	\$204,962
August 1, 2026 through July 31, 2027	\$209,061
August 1, 2027 through July 31, 2028	\$213,242

(c) **SALES REVENUES.**

(i) Subject to paragraph (ii) below, Morrison shall retain all sales revenues from each 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 a Retail Foodservice Area, less applicable sales taxes). Morrison will be responsible for remitting sales taxes applicable to the retail sales revenues retained by Morrison.

(ii) As of the Effective Date, Client maintains a system that allows Client employees to pay for meals or other items from a Retail Foodservice Area via payroll deduction. Client shall ultimately retain the payroll deduct sales revenues from these purchases; however, Morrison shall charge Client for the gross payroll deduct sales revenues from these purchases in order to remit sales taxes related to the payroll deduction sales. Morrison shall also provide a monthly credit in arrears on a Morrison invoice for the net payroll deduct sales revenues monthly in arrears.

(d) **CREDITS.**

(i) **PURCHASING CREDIT.** Subject to the terms set forth herein, Morrison shall issue a monthly purchasing credit to Client in arrears equal to nine percent (9%) of the food and supply purchases that Morrison makes for the Services through its purchasing programs from Morrison’s preferred broadline distributor during the month (excluding any purchases that Morrison makes for branded concepts (Chick-Fil-A, Subway, Starbucks, etc.) (“**Purchasing Credit**”). Client may request that Morrison make certain purchases through local vendors; however, if Morrison makes less than ninety percent (90%) of its total food and supply purchases for the Services through its preferred broadline distributor during a month due to Client’s actions or requests, then Morrison is not obligated to issue a Purchasing Credit to Client for that month.

(ii) **SERVICE CREDIT.** Morrison will also provide invoice credits to Client in the total amount of \$250,000, which will be provided in equal monthly installments (of \$4,166.67) on a Morrison invoice over the sixty (60) months after the Effective Date (“**Service Credit**”). If a Triggering Event (as defined below) occurs prior to the completion of sixty (60) months from the Effective Date, Morrison shall immediately cease providing the remaining installments of the Service Credit. For purposes of this Agreement, a “**Triggering Event**” is one or more of the following events: (A) the Services are terminated, in whole or in part, at any Location; or (B) Morrison ceases to use its purchasing programs exclusively for the purchase of the food, beverages, and other supplies for the Services at any Location due to the acts or requirements of Client.

(iii) **FEDERAL REPORTING.** In accordance with Section 1128B(b)(3)(A) of the Social Security Act, Client acknowledges and agrees that, depending upon how Client receives payment for items and services furnished, Client may have an obligation to report these credits from Morrison as a discount or rebate in accordance with this provision of the Social Security Act, including any related regulations.

(e) **WORKING CAPITAL PAYMENT.** Under the Prior Agreement, Client paid Morrison the amounts set forth in the table below as a non-interest bearing working capital payment, which reflected an amount equal to a month of projected charges due at the time of payment (“**Existing Working Capital**”). The Parties have agreed to “roll over” the Existing Working Capital to this Agreement in lieu of requiring Morrison to pay the Existing Working Capital to Client as a result of termination of the Prior Agreement. When the Services are terminated, Morrison shall adjust its final billing to Client for the Services to reflect this non-interest bearing working capital payment made by Client.

Service	Working Capital Payment
FNS Services	\$297,090

3. **TAXES.**



- (a) **CLIENT RESPONSIBILITY FOR TAXES.** Unless otherwise exempt, Client will be responsible and pay for all applicable taxes (except for the sales and use taxes Morrison is responsible for collecting under paragraph (b) below), fees, and assessments related to the Services, either directly or by reimbursement to Morrison. Morrison shall use reasonable efforts to utilize any tax exemption afforded by Applicable Law that is applicable to purchases made, or property used or provided, by Morrison under this Agreement; provided, however, that if such purchases or property remain subject to taxes even if Client or its Location is tax exempt, Morrison shall charge the cost of such taxes to Client, including any taxes that result from new taxes, legislation or enforcement positions.
- (b) **MORRISON RESPONSIBILITY FOR TAXES.** Morrison will be responsible for any tax imposed upon or measured by Morrison’s income. Additionally, Morrison shall collect and remit sales taxes on the sales revenues that Morrison retains from each Retail Foodservice Area, except that if Client fails to timely make a payment to Morrison for payroll deduction sales taxes under Paragraph 2(c)(ii) above, then Client shall remit sales taxes related to these payroll deduction sales directly to the proper taxing authority.
- (c) **EXEMPTIONS.** Client shall provide Morrison any applicable exemption or resale certificate related to the Services.

4. **PURCHASING.**

- (a) **VENDOR PAYMENT RESPONSIBILITY.** Responsibilities for paying vendors directly for the following items are indicated below (indicate by placing an “x” in the appropriate space).

<b>Item</b>	<b>Morrison</b>	<b>Client</b>
Computer related charges for laptops, tablets, and desktop computers supplied by Morrison (e.g., database maintenance and support, software, printer paper, etc.)	X	
Computer related charges for laptops, tablets, and desktop computers supplied by Client (e.g., database maintenance and support, software, printer paper, etc.)		X
Uniforms for Non-Supervisory Personnel		X
Access to Location’s Secure Wireless Network		X
Office supplies/forms	X	
In-service training materials/CHAT (as defined below)*	X	
Telephone equipment and service (access to local and long distance lines)		X
Copying		X
Client email accounts for Morrison Management Personnel		X
Morrison business licenses and permits	X	
All other licenses and permits (including licenses related to the service of alcohol)		X
Utilities		X
Service Contracts		X
Morrison General Liability Insurance	X	
Postage for Morrison Business	X	
Parking		X

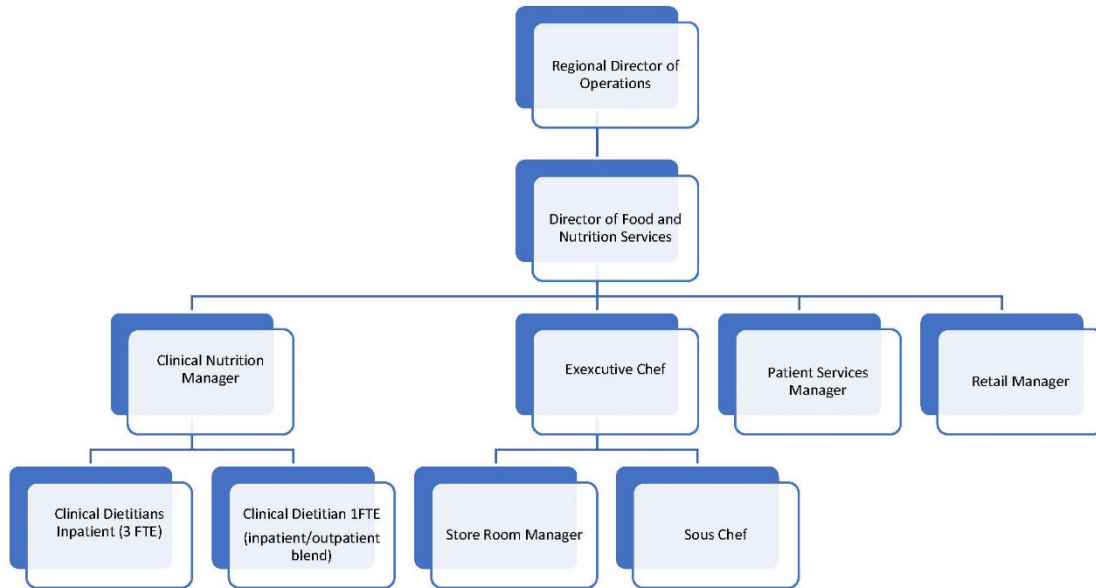
Background checks for Morrison Personnel performed in accordance with Morrison policy	X	
All physicals, screenings, tests, and immunizations required by Client of Morrison Personnel		X
Food	X	
Laundry/Linen		X
Smallwares Replacements	X	
Tablewares Replacements	X	
Kitchen/Dining Paper and Plastic	X	
Nourishment/Floor Stock Paper	X	
Menu Paper/Printing	X	
Chemicals/Supplies	X	
Facility Maintenance and Repairs		X
Rented/Leased Equipment		X
Marketing/Merchandising	X	
Patient Education Materials	X	
Dues/Subscriptions	X	
Miscellaneous (first aid kits; hairnets and plastic gloves; periodic cutlery sharpening)	X	
Safety Shoes/Belts	X	
Pest Control		X
Garbage/Trash Removal		X
Equipment Maintenance, Upgrades, Repairs, and Replacement		X
Armored Car Service	X	
Bank Card Processing Charges (including, but not limited to, payment processing fees, gateway fees, and interchange fees)	X	
Sanitation Audit Fees	X	

\*Note: “CHAT” (which stands for Communication, Help, and Training) is Morrison’s proprietary training program for its frontline service personnel.

- (b) **REIMBURSEMENT.** Client shall pay all expenses Morrison incurs for the items Morrison provides under paragraph (a) above. Morrison’s charges for items or services it purchases from its vendors are At Invoice Price, and its charges for general liability insurance and other corporate support related items (e.g., CHAT charges, computer-related charges, etc.) are based on the Morrison company-wide charge or allocation applicable to such items. If Morrison purchases an item listed above that Client is responsible for paying the vendor directly, then Client shall pay Morrison for the cost of that item At Invoice Price. “**At Invoice Price**” means Morrison’s charge based on the applicable vendor’s invoice, and does not include any Allowances that Morrison may receive from the vendor.
  - (c) **TITLE.** Morrison shall retain title to the items purchased by Morrison until Morrison has been fully reimbursed for those items. Client shall retain title to all items purchased and paid for by Client. Notwithstanding anything to the contrary, all leased computer hardware and any software furnished by or through Morrison, as well as any of Morrison’s Proprietary Information, will remain the property of Morrison (even if fully depreciated).
5. **INCENTIVE PROGRAM.** Morrison shall have the opportunity to earn the incentive amounts set forth in Schedule 2(b) each annual period based on mutually agreed upon quality metrics and incentive targets.

# SCHEDULE 1 TO EXHIBIT A MANAGEMENT ORG CHART

## Kern Medical Food & Nutritional Services Organization Chart



**SCHEDULE 2(b) TO EXHIBIT A  
SUMMARY OF COSTS**

**Annual Contract Cost Not to Exceed**

(Years 1 through 5)

	Total Salaries & Benefits	Total Support Fees	Total Year Price
Year 1 (August 1, 2023 through July 31, 2024)	\$1,271,556	\$ 197,003	\$1,468,559
Year 2 (August 1, 2024 through July 31, 2025)	\$1,296,988	\$ 200,943	\$1,497,930
Year 3 (August 1, 2025 through July 31, 2026)	\$1,322,927	\$ 204,962	\$1,527,889
Year 4 (August 1, 2026 through July 31, 2027)	\$1,349,386	\$ 209,061	\$1,558,447
Year 5 (August 1, 2027 through July 31, 2028)	\$1,376,374	\$ 213,242	\$1,589,616
Total Fixed Contract Price Years 1 through 5 (consisting of Total Salaries & Benefits and Total Support Fees)			<b><u>\$6,272,441</u></b>

**Incentive Opportunity**

Year 1 (August 1, 2023 through July 31, 2024)	\$ 36,593
Year 2 (August 1, 2024 through July 31, 2025)	\$ 37,324
Year 3 (August 1, 2025 through July 31, 2026)	\$ 38,071
Year 4 (August 1, 2026 through July 31, 2027)	\$ 38,832
Year 5 (August 1, 2027 through July 31, 2028)	\$ 39,609
Total Variable Contract Price Years 1 through 5 (consisting of Total Incentive)	<b><u>\$ 190,426</u></b>

**Net Charges**

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

Cost projections	Total Cost
Year 1 (August 1, 2023 through July 31, 2024)	\$2,306,078
Year 2 (August 1, 2024 through July 31, 2025)	\$2,490,564
Year 3 (August 1, 2025 through July 31, 2026)	\$2,689,809
Year 4 (August 1, 2026 through July 31, 2027)	\$2,904,993
Year 5 (August 1, 2027 through July 31, 2028)	\$3,137,392
Total Contract Expenses (Years 1-5)	<b><u><u>\$13,528,836</u></u></b>

Cafeteria sales from Cash and Credit

Total Revenue

Year	1	(August 1, 2023 through July 31, 2024)	\$780,764
Year	2	(August 1, 2024 through July 31, 2025)	\$796,379
Year	3	(August 1, 2025 through July 31, 2026)	\$812,306
Year	4	(August 1, 2026 through July 31, 2027)	\$828,552
Year	5	(August 1, 2027 through July 31, 2028)	\$845,123

Total Cafeteria Sales Revenue

**\$4,063,124**

Net Charges

Total Net Charge

Year	1	(August 1, 2023 through July 31, 2024)	\$1,525,314
Year	2	(August 1, 2024 through July 31, 2025)	\$1,694,185
Year	3	(August 1, 2025 through July 31, 2026)	\$1,877,503
Year	4	(August 1, 2026 through July 31, 2027)	\$2,076,441
Year	5	(August 1, 2027 through July 31, 2028)	\$2,292,269

Total Net Charge For Years 1 through 5

**\$9,465,712**

**SAMPLE INVOICES**



**Morrison Healthcare**

KERN MEDICAL

**INVOICE**  
**SAMPLE**  
**8/1/2023**

<b>Services</b>	<b>From:</b> 8/1/2023	<b>To:</b> 8/31/2023	<b>Attention:</b>	Tyler Whitezell
<b>Remit To:</b>	Morrison Healthcare		<b>Bill To:</b>	Kern Medical
<b>Address</b>	P.O. Box 102289		<b>Address</b>	1700 Mt. Vernon ave.
<b>City / State</b>	Atlanta	GA 30368-2289	<b>City / State</b>	Bakersfield CA 93306

Item Name	Contract Ref.	Details	Amount
Management and RD Payroll		\$105,963/mo	105,963.00
Mgmt and Admin Fee		\$16,416/mo	16,416.00
Food Paper and Directs (not incl mgt fee)		\$190,925/mo	190,925.00
Less Monthly Incentive Credit		\$4166/mo	(4,166.00)
Less Estimated Retail Credit		\$-85,000/mo	(85,000.00)
<b>Sub Total:</b>			<b>224,138.00</b>
<b>Tax:</b>			<b>0</b>
<b>Total Due:</b>			<b>224,138.00</b>

**Authorized by:**

**Received on:**

*Payment is due within 45 days of the date of receipt of Morrison's billing.*



**Morrison Healthcare**

KERN MEDICAL

**INVOICE**  
**209342023053101**  
**8/31/2023**

<b>Services</b>	<b>From:</b> 8/1/2023	<b>To:</b> 8/31/2023	<b>Attention:</b>	Tyler Whitezell
<b>Remit To:</b>	Morrison Healthcare		<b>Bill To:</b>	Kern Medical
<b>Address</b>	P.O. Box 102289		<b>Address</b>	1700 Mt. Vernon ave.
<b>City/ State</b>	Atlanta	GA 30368-2289	<b>City/ State</b>	Bakersfield CA 93306

Item Name	Contract Ref.	Details	Amount
Retail Sales Actual Less PreBill Credit		Retail Sales Less Pre Bill Credit of -\$85,000	(3,500.00)
Payroll Deduct		Payroll Deduct	2,000.00
Less Initial Food, Paper, Directs (not incl fee)		Less Initial Food, Paper, Directs (not incl mgt fee)	(190,925.00)
Food Cost		Food Cost	170,000.00
Paper Cost		Paper Cost	13,000.00
Direct Expenses		Total Direct Expenses - \$16,095 (mgt. fee)	17,500.00
Prior Month Adjustment		Prior Month Adjustment	0.00
<b>Sub Total:</b>			<b>8075.00</b>
<b>Tax:</b>			<b>.00</b>
<b>Total Due:</b>			<b>8075.00</b>

**Authorized by:**

**Received on:**

*Payment is due within 45 days of receipt of invoice*





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

July 19, 2023

**Subject:** Proposed retroactive Service Contract with Sciton, Inc.

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board reapprove the proposed, now retroactive, Service Contract with Sciton, Inc. for repairs on a laser device located at an ambulatory clinic. Your Board previously approved the Service Contract at your May 17, 2023 Board meeting, but the Vendor had issues with the approval on their end so they would not accept that Service Contract as presented.

The Service Contract is for the repair of a laser device with a one-time payment in the amount of \$22,454 for a one (1) year service agreement with no additional fees or charges for this agreement.

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, interest on late payments, indemnification only of vendor, no insurance obligations of vendor, and no right to cancel. Efforts were made to negotiate with the vendor, but to no avail.

Therefore, it is recommended that your Board approve the proposed retroactive Service Contract with Sciton, Inc. for professional services, for a term of one (1) year beginning on the signature date, in an amount not to exceed \$22,454, and authorize the Chairman to sign the Service Contract to replace the Service Contract signed on May 17, 2023.



925 Commercial Street, Palo Alto, CA 94303  
Tel: (650) 543-8375 • eFax: (914) 992-9155

Kern Medical  
1700 Mt. Vernon Ave  
Bakersfield, CA 93303  
United States

Service Coverage Renewal for System Serial: 14590

Dear Valued Customer,

We believe you will make a wise investment in your valuable equipment by extending this maintenance contract. Your system is a complex instrument that provides the superior performance necessary to take your practice of medicine into tomorrow. However, this system ages with time and usage. We believe that our service program provides several important benefits:

1. It will reduce the probability of unexpected system failure which may force you to reschedule your patients, resulting in costly delay and frustration.
2. It will assist you with support of proper maintenance records to bolster your case should you become exposed to any unplanned medical litigation.
3. It will protect you from large unplanned service costs and preserve your exposure to a predictable budget.

Sciton offers a choice of coverages; **Premium** or **Basic**.

**Premium Contract** - Maximum coverage

- Includes all travel and labor
- 100% coverage for parts
- Includes one free Preventive Maintenance (PM). This PM is conducted at your request and convenience. The PM will include services necessary to ensure the proper performance of your system. These services include software update, full optical alignment, complete power calibration, filters/cartridges replacement, optical clean-up, mechanical integrity check, high/low voltage testing and inspection of all accessories.

**Basic Contract** - Limited coverage

- 25% discount from the Premium Plan
- \$1,500 deductible for travel and labor per service call
- 100% coverage for parts + \$50 shipping charge for each shipment of part(s)
- Does not include PM

Sciton offers the flexibility of monthly and quarterly payment with a processing fee of \$25 per payment. Please see the enclosed quotation, and payment schedule for more details. Systems that are out of warranty or not under service contract will need to complete a \$1,950 inspection service call and pass the inspection to qualify for this program.

To move forward, please select the coverage option you prefer and return the signed Service Contract Quotation and Payment Authorization Form via one of following methods:

Email: [hasanain.kadhim@sciton.com](mailto:hasanain.kadhim@sciton.com)  
EFax: (914) 992-9155  
Mail:

Hasanain Kadhim  
Sciton Inc.  
925 Commercial Street  
Palo Alto, CA 94303

Please do not hesitate to contact me if you have any questions or concerns.

Best,

Hasanain Kadhim  
Sciton Service  
Phone: (650) 543-8375  
EFax: (914) 992-9155  
[hasanain.kadhim@sciton.com](mailto:hasanain.kadhim@sciton.com)



925 Commercial Street, Palo Alto, CA 94303  
 Sciton Service: (650) 543-8371 • Fax: (650) 543-8390

**Service Contract Quotation**

To: Kern Medical  
 1700 Mt. Vernon Ave  
 Bakersfield, CA 93303  
 United States

Phone: 661-326-2237

Fax:

Date: June 16, 2023

Quotation No: 061623

Customer No: 13781

Serial No.: 14590

Coverage Period: 1 Year

Start Date: June 3, 2023

End Date: June 1, 2024

Quote Valid Until: July 18, 2023

Qty	Premium Coverage		Description
1	<b>Full Payment</b> 1 payment	\$22,453.18	<ul style="list-style-type: none"> <li>Covers all travel, labor and parts for the coverage period as indicated above.</li> <li>Includes one preventive maintenance visit per year.</li> <li>This contract excludes misuse, abuse, and accidents.</li> <li>Goods or parts that are replaced or repaired under this warranty because of normal wear or use, such as contact plates and wear surfaces will be billed an additional nominal repair charge.</li> <li>Payment plans are available for a fee of \$25 per installment are available for a fee of \$25 per installment.</li> <li>First payment is due upon signing the contract</li> <li>Contract is not valid until the first payment is made</li> <li>This Contract is for the Coverage period noted above. It is non-cancellable, non-refundable and non-transferrable</li> <li>Direct phone number and que priority for support, service calls, and parts</li> </ul>
	X _____ Initial selected option	Contract Amount <b>\$22,453.18</b>	
	<b>Quarterly Payment</b> 4 payments	\$5,613.30	
	Processing fee	\$25.00	
	Per Quarter	\$5,638.30	
X _____ Initial selected option	Contract Amount <b>\$22,553.18</b>		
<b>Monthly Payment</b> 10 payments	\$2,245.32		
	Processing fee	\$25.00	
	Per Month	\$2,270.32	
X _____ Initial selected option	Contract Amount <b>\$22,703.18</b>		

Qty	Basic Coverage		Description
1	<b>Full Payment</b> 1 payment	\$16,839.89	<ul style="list-style-type: none"> <li>\$1,500.00 deductible for each service call (with a 90 day warranty on replaced parts and labor)</li> <li>After deductible, covers all travel, labor and parts for the coverage period as indicated above.</li> <li>\$50.00 additional shipping and handling fee per parts shipment</li> <li>This contract excludes misuse, abuse, and accidents. Goods or parts that are replaced or repaired under this warranty because of normal wear or use, such as contact plates and wear surfaces will be billed an additional, nominal repair charge.</li> <li>This agreement is an annual contract, payment plans are available for a fee of \$25 per installment.</li> <li>First payment is due upon signing the contract</li> <li>Contract is not valid until the first payment is made</li> <li>This Contract is for the Coverage period noted above. It is non-cancellable, non-refundable and non-transferrable</li> </ul>
	X _____ Initial selected option	Contract Amount <b>\$16,839.89</b>	
	<b>Quarterly Payment</b> 4 payments	\$4,209.97	
	Processing fee	\$25.00	
	Per Quarter	\$4,234.97	
X _____ Initial selected option	Contract Amount <b>\$16,939.89</b>		
<b>Monthly Payment</b> 10 payments	\$1,683.99		
	Processing fee	\$25.00	
	Per Month	\$1,708.99	
X _____ Initial selected option	Contract Amount <b>\$17,089.89</b>		

	Payment Options	Payment Terms
Select Payment Option	<input type="checkbox"/> Credit Card <input type="checkbox"/> Wire Transfer <input type="checkbox"/> Purchase Order <input type="checkbox"/> Check <input type="checkbox"/> ACH	<p>Once established all quarterly or monthly payments will be automatically process on the dates indicated on "Payment Schedule."</p> <p>Payment Promissory Options are automatic Credit Card or automatic debit of bank account.</p> <p>Sciton is required by law to collect applicable state sales tax.</p> <p>Payment Terms: Remit 1st payment, including applicable tax, as indicated on "Payment Schedule."</p> <p>No periodic payments by Check and / or P.O. paid by check</p>

Sciton Representative Hasanain kadhim

Date: 06/16/2023

I accept the attached "Terms and Conditions of Service Contract" and agree to make the payment(s) as acknowledged above.

\_\_\_\_\_ Customer Approval

\_\_\_\_\_ Date

## Payment Options and Schedule

**Customer** Kern Medical  
**Quotation #** 042423  
**Serial Number** 14590

Term		Premium Coverage		Basic Coverage	
		Contract Amount	Amount Due	Contract Amount	Amount Due
<b>Full Payment</b>					
Contracted Amount (after applicable tax)		\$22,453.18	<b>\$22,453.18</b>	\$16,839.89	<b>\$16,839.89</b>
<b>Quarterly Payment Schedule</b>					
1st Payment	March 2, 2023	\$5,638.30	\$5,638.30	\$4,234.97	\$4,234.97
2nd Payment	June 2, 2023	\$5,638.30	\$5,638.30	\$4,234.97	\$4,234.97
3rd Payment	September 2, 2023	\$5,638.30	\$5,638.30	\$4,234.97	\$4,234.97
4th Payment	December 2, 2023	\$5,638.30	\$5,638.30	\$4,234.97	\$4,234.97
<b>Monthly Payment Schedule</b>					
1st Payment	March 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
2nd Payment	April 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
3rd Payment	May 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
4th Payment	June 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
5th Payment	July 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
6th Payment	August 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
7th Payment	September 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
8th Payment	October 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
9th Payment	November 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99
10th Payment	December 2, 2023	\$2,270.32	\$2,270.32	\$1,708.99	\$1,708.99

**Once the Service Contract is established, all payments will be automatically processed on the dates indicated on the Payment Schedule. This payment schedule is for a one year contract coverage period. Multiyears contract payment schedule will be processed depending upon the time period specified in the Service Contract Quotation.**

## TERMS AND CONDITIONS OF SERVICE CONTRACT

1. **Nature of this Agreement and Definitions.** The terms and conditions of this Agreement (the "Agreement") are for the maintenance by Sciton, Inc. ("Sciton") of the equipment or products described on the Service Contract for the period as indicated on the front page, including parts and accessories (the "Equipment"), or the servicing of any Equipment, including travel and labor ("Services") determined by plan type. The following information is found on the Service Contract: the customer ("Customer"), the job site where the Equipment may be delivered or used (the "Site"), the type of payment plan, (One Time v. Periodic), and the type of Service Contract (Premium v. Basic). "The term "in writing," "written," and/or any other derivatives of the word "write" that are used in this Agreement mean any communication that is in writing either handwritten, typed, printed, and/or electronically delivered to the other party as provided herein and as permitted by applicable law."

2. **Priority of this Agreement.** Customer agrees that its receipt of Services for its Equipment is conditioned upon complying with these terms and conditions. Customer agrees that this Agreement supersedes and controls over all other communications or agreements with Sciton concerning the Service Contract. Any written or oral terms of conditions or other provisions different from or varying these terms and conditions, wherever found, are rejected and not binding on Sciton.

3. **Parts and Labor.** Sciton may provide both parts and labor. In servicing your product, Sciton may use parts or products that are new or refurbished parts, at its sole discretion. Refurbished parts are equivalent to new in performance and reliability. Sciton will retain the replaced part or product that is exchanged during service as its property, and the replacement part or product will become your property.

4. **Services.** If Sciton provides Services to Customer, including repair or maintenance, it will use professional skill and judgment in accordance with normally accepted industry standards. If Sciton fails to do so, and as its only obligation to Customer for defective Services, Sciton will perform those Services again at Sciton's expense.

5. **Availability of Services.** Commercially reasonable efforts will be made to provide prompt and efficient service; however, Sciton reserves the right to prioritize its service assignments due to the nature of the work required, location, weather, work load conditions, and other factors.

6. **What is Covered.** Except as otherwise expressly provided in this Agreement, Sciton will provide to Customer all of the necessary Services required including parts, labor, and travel to maintain proper operation of the Equipment under normal operation and service for the duration of the Service Contract. Parts for third party items are not included under this Agreement unless covered by the original manufacturer's warranty. Goods or parts that are replaced or repaired under this warranty because of normal wear or use, such as contact plates, wear surfaces and flashlamps, will be billed an additional, nominal repair charge. Customer will be billed for defective parts which have not been returned in a timely manner. Premium Service Contracts include one (1) free preventative maintenance visit per contract year. The duty to schedule this one (1) free preventative maintenance visit per Service Contract year is the Customer's.

7. **What is Not Covered.** IN NO EVENT WILL SCITON BE LIABLE FOR COSTS OR PROCUREMENT OF SUBSTITUTED EQUIPMENT BY CUSTOMER OR ANY DAMAGE (WHETHER PUNITIVE, INCIDENTAL, SPECIAL, BUSINESS INTERRUPTION, CONSEQUENTIAL, OR OTHER DAMAGES (INCLUDING WITHOUT LIMITATION LOST OF PROFIT OR REVENUE) ARISING FROM ANY DELAY IN RENDERING SERVICES INCLUDING DIFFICULTIES IN SECURING PARTS, LABOR, TRANSPORTATION, OR MATERIALS AND/OR INVOLVING A FORCE MAJEURE EVENT (AN EVENT OF FORCE MAJEURE IS AN EVENT OR CIRCUMSTANCE WHICH IS BEYOND THE CONTROL AND WITHOUT THE FAULT OR NEGLIGENCE OF SCITON AND WHICH BY THE EXERCISE OF REASONABLE DILIGENCE SCITON WAS UNABLE TO PREVENT PROVIDED THAT EVENT OR CIRCUMSTANCE INCLUDES THE FOLLOWING, BUT IS NOT LIMITED TO: A WIDESPREAD EPIDEMIC, PANDEMIC, A PUBLIC HEALTH EMERGENCY, ACTS OF GOD, LABOR UNREST, FIRE, FLOOD, EXPLOSION, EARTHQUAKE, RIOT, WAR, INVASION, ACTS OF TERRORISM, CIVIL OR MILITARY DISTURBANCES, OR BUSINESS INTERRUPTIONS EXPERIENCED BY CUSTOMER OR SCITON RELATED TO ANY FORCE MAJEURE EVENT, OR ANY CHANGED CIRCUMSTANCES EXPERIENCED BY SCITON THAT

RENDERS ITS PERFORMANCE COMMERCIALY UNREASONABLE OR IMPOSSIBLE) ("FORCE MAJEURE EVENT"). THE PURPOSE OF PARAGRAPH 7 IS TO LIMIT THE POTENTIAL LIABILITY OF SCITON ARISING OUT OF THIS AGREEMENT AND SERVICE CONTRACT. CUSTOMER FURTHER AGREES THAT ANY DAMAGES CLAIMED PURSUANT TO SERVICE RENDERED UNDER THIS SERVICE CONTRACT SHALL NOT EXCEED THE TOTAL COST PAID BY HIM OR HER FOR THE SERVICE CONTRACT, IN ANY EVENT.

8. **Payment Terms.** Interest accrues on overdue payments at the rate of not less than one and one-half percent (1.5%) per month, but not more than the amount allowed by law, on the unpaid balance from the original due date. An additional late fee of One Hundred Dollars (\$100.00) will accrue for each month past the due date until the entire balance is paid. Payment shall not be withheld for any delay in Services. Under a Basic Plan, if shipping is necessary, Customer is responsible for payment of delivery of Equipment to Sciton's Corporate Service Center in California (or elsewhere if so directed by Sciton) and shipping of any parts, goods, and/or materials necessary for Sciton to provide Services. A shipping and handling fee of Fifty Dollars (\$50) will be applied for each shipment under such circumstances. Customer is authorized to use his/her/its credit card in order to complete Payment under this Agreement. Customer acknowledges that Sciton will impose a surcharge of 3.0% on Customer for credit card charges above \$10,000 (USD)— to the extent consistent with applicable California law. A surcharge is an additional amount imposed at the time of the transaction by Sciton that increases the charge to Customer for using a credit card. The surcharge is intended to reimburse Sciton for the processing fees incurred by Customer's credit card company.

One Time Payment Plan – Payment is due in full at the time of acceptance of this Agreement. The Service Contract is valid when paid in full.

Periodic Payment Plan – The payment schedule for the Periodic Payment Plan is the payment schedule included in the promissory note attached to the Service Contract. Such Plan is only available upon approved credit by Sciton and a Twenty Five Dollar (\$25.00) processing fee for processing each payment. Customer consents to Sciton's check of his/her/its credit. Customer authorizes Sciton to charge his/her/its credit card and/or debit his/her/its bank account in payment of the Periodic Payment Plan. The Service Contract is valid when Sciton receives the first payment. Failure to make such Periodic payments will result in the suspension of services under this Agreement, but Sciton maintains the right to collect all unpaid installments.

Customer is required to remit all applicable sales taxes as invoiced. Customer acknowledges that unless and until the Service Contract is paid in full, Sciton has no obligation to service the Equipment and will not do so. Equipment sent to Sciton by Customer will not be serviced if Customer has not paid the Service Contract in full. In such circumstances, if Customer refuses to pay the Service Contract in full within seven (7) days of Sciton's demand of same, and further insists that Sciton return the Equipment, then Customer acknowledges herein: 1) that Customer will pay all shipping costs outbound from Sciton for the return of the Equipment; 2) that any unserviced Equipment poses a risk to patients who are treated with the unserviced Equipment; 3) an obligation to disclose the unserviced condition of the Equipment before using it to treat a patient; 4) an assumption of all responsibility and liabilities for the use of the equipment; 5) an assumption of all responsibility and liabilities for any extraordinary repairs and maintenance necessitated by Customer's failure to pay the Service Contract such that regular service could not be rendered by Sciton; and 6) a forfeiture of any partial payments made.

9. **Deductible.** A One Thousand, Five Hundred (\$1,500.00) deductible payment is required for each service call under a Basic Service Contract. This payment is due prior to dispatch of a service technician and is not refundable. No deductible is required under a Premium Service Contract.

10. **Bankruptcy or Insolvency of Buyer.** If the financial condition of the Customer at any time is such as to give Sciton, in its judgment, reasonable grounds for insecurity concerning Customer's ability to perform its obligations under this Agreement, Sciton may (a) by notice in writing to Customer, cancel this Agreement, without judicial intervention or declaration of default of Customer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to Customer, or (b) require full or partial payment in advance and suspend continuance of the work, to be performed by Sciton, until such payment has been received.



## TERMS AND CONDITIONS OF SERVICE CONTRACT

11. **Customer's Indemnification** Each Party will indemnify, defend and hold harmless the other Party and its affiliates from any and all costs, expenses, damages, and liability, including reasonable attorneys' fees, to the extent arising from or pertaining to any negligence or intentional misconduct, breach of any law or regulation, willful misconduct, or breach of this Agreement by either Party – whether the claim arises between them or involves a third-party. If the party seeking indemnification ("moving party") also acted (or is claimed to have acted) negligently or engaged in intentional misconduct, there is no duty to indemnify between the parties. This clause applies to claims between the parties and claims brought by third parties against the Customer and/or Sciton hereto. The indemnity will survive expiration or termination of this Agreement.

12. **Maintenance and Repairs:** Only factory-certified Sciton service engineers are authorized to perform maintenance and repairs on Sciton systems. Using a third-party service entity to perform repairs or maintenance on the Sciton system will void any existing warranty on the system. Sciton permits only Sciton factory-specified parts, available solely through Sciton, be used for repairs. Using non-certified parts may cause damage to other assemblies and components within the system and could cause injury to the user and the user's patients. Using non-certified parts will void any existing warranty on the system. During a service intervention, if the Sciton engineer identifies evidence that a repair or maintenance was performed by a third party, e.g., someone other than a certified Sciton engineer, the Sciton engineer will terminate the service immediately due to safety concerns. By signing these terms and conditions and agreeing to this warranty, you also agree to defend and indemnify Sciton for any damage to the system and/or injury to users (and users' patients) of the device.

13. **Customer's Insurance Obligations.** Customer agrees to maintain appropriate insurance protecting Sciton from all loss, damage, expense, or penalties arising from or related to the use, maintenance, and/or service of the Equipment during the Service Contract period. Sciton does not provide, extend or afford any insurance coverage to Customer, or any operator of the Equipment. The insurance coverage provided for above will not act to limit Customer's liability under this Agreement, and Customer will be responsible for any loss or damage to the Equipment until, and if, it is returned to Sciton.

14. **Returns.** Prior to return of any Products to SCITON for any reason, Customer shall first request a return material authorization ("RMA") from SCITON and provide SCITON the following information about the Product(s) being returned: (a) quantity, (b) part number, (c) RMA number, and (d) a detailed reason for Product return. SCITON shall accept returns only after it has issued a RMA number authorizing the return of such Product(s). Customer shall promptly ship all such authorized returns to SCITON freight prepaid. Such return shipment must be in the proper package and display the appropriate reference to the RMA including the RMA Number on boxes in which the returned Product is shipped. Unauthorized returns, or returns which fail to display the appropriate reference, will be subject to rejection of shipment and subsequent return to Customer at Customer's expense. In all cases of returns, final approval by SCITON as to credit, or replacement in the case of Products returned under a SCITON Warranty, may be withheld pending inspection and/or testing of the returned Product by SCITON and verification of the pertinent facts. If SCITON determines after inspection that a warranty claim is invalid, SCITON may charge Customer for the costs incurred by SCITON related to such inspection and shipping/insurance. All returned parts must be marked new or used when returned to SCITON. Customer must return alleged defective parts within thirty (30) days of receiving replacement part or additional charges will apply. Additionally all returned parts must reference the proper RMA number as assigned by SCITON. If the return part is serialized, and Customer returns the part, then SCITON expects that the serial number on the returned part will match the serial number identified by Customer at the time the part is requested for replacement. No other serialized part can be substituted at the time of the return of the alleged defective part. If SCITON determines that a unit has parts or components that do not match its list of original manufacturer equipment in terms of serialized parts, then SCITON reserves the right to reject the return and Customer must pay to have the unit inspected and brought back to SCITON specifications and also pay retail price for the replacement part, as SCITON does not service units that have been serviced by non-SCITON certified service technicians due, in part, to the risk that such repairs pose to unit

buyers and patients undergoing treatment with said units.

15. **Limited Warranty – Limitation of Remedies.** (a) Except as otherwise specified herein, Sciton only warrants its Services commencing after full payment has been received by the Customer: (i) To be free from defects in material and workmanship, in the manner and under the conditions as specified in Sciton's warranty for the individual Equipment, for the period of the Service Contract under a Premium Service Contract and for ninety (90) days from the date of Service under a Basic Service Contract (including parts and labor), unless the deal paperwork (including but not limited to the invoice and/or quote) specifies a different warranty term in this regard; (ii) Wholly new and unrelated Services to the Equipment within 90 days from the date of Service under a Basic Service Contract require the payment of a new deductible, unless the deal paperwork (including but not limited to the invoice and/or quote) specifies a different warranty term in this regard; (b) No representative or person is authorized to bind Sciton for any obligations or liabilities beyond this warranty in connection with Sciton's Services. This warranty is made to the Customer only at the Site and is non-transferable to other equipment or to other owners of the equipment, and may only be modified or amended by a written instrument signed by a duly authorized officer of Sciton. (c) (i) Goods, material, or parts that are replaced or repaired under this warranty because of normal wear or use, such as contact plates, wear surfaces, and flashlamps are warranted on a monthly pro rated basis only for the remaining portion of the Sales Contract as credit toward new replacement goods or parts; (ii) Optical coatings, filters, lenses, and mirrors will be repaired or replaced under this warranty if kept clean according to manufacturer's instructions. Dirt or debris on the surface of such an item during usage may cause thermal damage and void the warranty for such item; and (iii) Third party items are warranted by their manufacturers and are not covered by Sciton. (d) These remedies are available only if Customer notifies Sciton in writing promptly upon discovery of the defect, and in any event within the warranty period for the Individual Equipment. The warranty shall be null and void (i) where the goods are unpacked, worked on, altered, serviced, modified, and/or repaired by person(s) not authorized by Sciton so as, in Sciton's sole judgment, to injure the stability, reliability, or proper operation of such goods; (ii) where service is required due to the Customer's failure to operate or maintain the goods in a manner consistent with the specifications and guidelines set forth in the Equipment's operator manual; (iii) if the goods are subject to misuse, negligence or accident; and/or (iv) where the goods are connected, installed, dismantled, disassembled, used or adjusted otherwise than in accordance with the instructions furnished by Sciton. (e) This warranty only applies to devices and components sold by Sciton to the Customer and is expressly voided to the extent any component and device is purchased by a Customer from a third party used laser broker. Any component part purchased from Sciton that malfunctions due to a part or device purchased by the Customer from a third party used laser broker will void the warranty in that component part. (f) THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (EXCEPT FOR SPECIFIC WRITTEN PRODUCT PERFORMANCE GUARANTEES) WHETHER WRITTEN, ORAL, OR IMPLIED, AND SHALL BE THE CUSTOMER'S SOLE REMEDY AND SCITON'S SOLE LIABILITY ON CONTRACT OR WARRANTY OR OTHERWISE FOR ITS SERVICES.

16. **Equipment Recertification.** In the event that Customer wishes to transfer ownership of the Equipment, Customer will be responsible for obtaining an Inspection and Equipment Recertification from Sciton. The Inspection Fee at this time is \$5,000 (USD), but is subject to change on a yearly basis or at Sciton's discretion. The Transfer of Ownership Fee price varies based on configuration of the system. Customer may request a quote based on his/her/it's configuration from Sciton Service. The Transfer of Ownership Fee includes the cost of 1-year service contract for the current configuration of the system, clinical in-service training, the ability to upgrade the system in the future if desired, marketing material customized to the configuration of the system, access to marketing and clinical support material on Sciton Pro, and complete transfer of account to a new name and address. The fee will be paid in advance prior to any transfer of ownership. Customer will be responsible for the cost of any repairs needed to obtain recertification from Sciton. Sciton will not honor any requests to service Sciton systems that were not purchased directly from Sciton and for which Sciton has no record of recertification or transfer of ownership. Sciton reserves the right to deny a transfer of ownership request for any reason, including, but not limited to, if the Equipment has been purchased from a

## TERMS AND CONDITIONS OF SERVICE CONTRACT

non-Sciton customer or other third party, if the Equipment contains non-Sciton certified component parts, if the Equipment is being transferred to a party who resides in a country other than where the original Sciton Customer resides, and/or if Sciton has reason to believe that the Equipment has either been altered, modified or repaired by a third party. Sciton's Transfer of Ownership Policy, including all applicable fees, is available to Customer upon request and subject to revisions at Sciton's discretion. Customer acknowledges that Sciton's Equipment Recertification policy is intended to protect customers and purchasers from receiving poorly maintained and/or dangerous equipment, equipment that has been subject to unauthorized repairs from persons/entities other than Sciton, or is otherwise non-compliant with FDA regulations.

17. **Sciton's Rights to Subcontract.** Sciton may subcontract any portion of the Services, but Sciton's obligations and rights hereunder shall not thereby be limited or affected.

18. **Errors.** Stenographic and clerical errors are subject to correction.

19. **Applicable Law; Jurisdiction and Venue.** [Intentionally Omitted]

20. **Substitutions and Modifications.** Sciton will have the right to make substitutions and modifications in the specifications of Equipment serviced by Sciton, provided that such substitutions or modifications will not materially affect overall product performance. Sciton reserves the right, at its sole discretion, to use new or fully factory refurbished parts when performing Services.

21. **Miscellaneous.** This Agreement constitutes the complete and exclusive statement of the terms and conditions between the parties, and may be modified only by a writing executed by both of them. This Agreement and the related pricing are limited to the Site as listed on the Contract, applicable solely to this deal, and are neither transferable nor assignable to third parties without Sciton's prior written consent. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and effective for all purposes. In accordance with the U.S. federal E-SIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.), and any other applicable law or regulation of any kind concerning the use of electronic signatures, the parties expressly agree to the use of electronic signatures to execute this agreement. An electronic signature includes any symbol or series of symbols, including an individual's initials, that has been executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual's handwritten signature. Each person executing this Agreement represents and warrants that he or she is the person stated and has full and legal authority to execute this Agreement for and on behalf of the respective party for which he or she is executing this Agreement and to bind that party in accordance with this Agreement. Each party further represents and warrants that it has not altered or modified this Agreement in any way from the agreement to which the parties agreed.

22. **Acceptance.** The terms and conditions of this Agreement will be deemed accepted upon the signature by Customer of the Service Contract and/or at the time of payment. Upon acceptance, Customer authorizes Sciton to perform the services set forth above and agrees to all the terms and conditions stated within.

23. **Survival.** Any rights and obligations under this Agreement, which by their nature should survive, shall survive the expiration or termination of this Agreement.

24. **Divisibility.** If any provision of this Agreement becomes or is declared illegal, invalid, or unenforceable, such provision will be divisible from this Agreement and will be deemed to be deleted from this Agreement. The remainder of this Agreement shall remain in full force and effect.

25. **Right to Counsel.** Customer acknowledges Customer's right to have separate counsel, at Customer's expense, review this Agreement and provide advice. By executing this Agreement, Customer acknowledges that Customer has read, reviewed and understood the terms and conditions herein.

26. **Compliance with State Law Regarding Laser Devices.** Owners of lasers and laser-based devices in Illinois (IL), Arizona (AZ), Texas (TX), Georgia (GA), Florida (FL), Massachusetts (MA), and New York (NY) may be required to register certain lasers and laser-based devices with the applicable state agency. Responsibility for compliance with any state-

specific requirements pertaining to laser ownership, including but not limited to, laser registration, rests exclusively with the device owner and not with SCITON.

27. **No Rights to Cancel.** This Agreement shall commence when deemed valid and shall continue in full force in effect for a minimum period of one (1) year or longer depending upon the time period specified in the Service Contract. The Service Contract cannot be canceled mid-term and no partial refunds will be allowed.

28. **Sciton Professional Website.** In connection with this purchase, Customer is authorized to access the educational materials contained on the Sciton Professional Website, [www.Scitonpro.com](http://www.Scitonpro.com). Use of the Sciton Professional Website is governed by the ScitonPro Terms of Use, found on the Sciton Professional Website. This website is for physician use and education only. Customer may not share Customer's username or password with third parties.

29. **Data Privacy.**

General. SCITON is committed to protecting the privacy of your personally identifiable information to the extent possible. SCITON maintains reasonable security measures to protect sensitive personally identifying information and only uses/collects personal information in a lawful and fair manner. You represent that you are in compliance with any relevant data protection laws.

Personal Information. SCITON collects personal information from agreements, e-mails, faxes, telephone inquiries, correspondence, web forms, surveys, and other means of communication. SCITON collects such information when you agree to purchase or order or avail yourself of goods or services, registration for a service (e.g. user groups, seminars, and tradeshow), to track warranty rights and obligations, to provide product information, and other lawful purposes. "Personal Information" means information that can be used to identify a specific individual, such as your name, address, e-mail address, phone number, birth date, credit card information, etc.

Consent. SCITON collects and stores data as it pertains to the Agreement signed by you. We maintain records of your Agreement and the services related to the Agreement. As part of your interactions with SCITON, and by entering into the Agreement, you consent to SCITON collecting all data collected in connection with the Agreement, in compliance with the GDPR opt-in requirement. We will not share your information with any third party outside of our organization other than as necessary to fulfill your requests, e.g., to ship a product to you, to provide your name and contact information to Sciton's third party vendors in conjunction with Sciton services like Sciton Pro, Sciton's Success Builder Program, and The Concierge Service and Subscription Program, or as required by law. Except when otherwise permitted by law, we will only use the information for the purpose for which it was given. We will obtain your additional express consent prior to collecting, using, or disclosing sensitive information for any purpose outside of acting in accordance with the Agreement. SCITON's Privacy Policy is located on its website, [www.SCITON.com](http://www.SCITON.com). SCITON may update its Privacy Policy from time to time, please periodically review the Privacy Policy for updates.

Withdrawing Consent/Data Deletion Request. You may opt to withdraw consent at any time. If you wish to review, modify, delete, or otherwise express your concerns about any personally identifying information that you previously provided, you can do so at any time by contacting:

SCITON, Inc.  
925 Commercial Street  
Palo Alto, CA 94303  
United States  
Phone:  
+1.650.493.9155  
Toll Free:  
+1.888.646.6999  
[info@SCITON.com](mailto:info@SCITON.com)

Third-Party Service Providers. To build a great product for you and provide exceptional customer service, we need partners. We utilize third party vendors like Google Analytics and Marketo to handle your data, who have confirmed are GDPR-compliant. Except for the disclosure of Customer's name and contact information to Sciton's third party vendors in conjunction with Sciton services like Sciton Pro, Sciton's Success Builder Program, and The Concierge Service and Subscription Program, Sciton does not disclose

## TERMS AND CONDITIONS OF SERVICE CONTRACT

or sell personal information to third parties; however, should this policy change, Sciton will notify you of same prior to disclosing any information to third parties. If Sciton must disclose personal information to a third-party, Sciton will require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

**Disposal of Data.** SCITON will take all reasonable steps to erase or arrange for the destruction of all sensitive personally identifying information contained in records when the records are no longer to be retained pursuant to applicable law, regulations, or business needs.

**Breach of Security.** In the event there has been a breach of security in relation to your personally identifying information, and the state in which you reside requires notice upon discovery of the breach, SCITON, without delay and as soon as reasonably practicable, and in accordance with any applicable law, will notify you, in writing, and conduct an investigation of same, and report to the appropriate authorities/agencies, if applicable.

**E-mail Scams.** There are various scams designed to steal your personal information. If you receive an e-mail that looks like it is from SCITON asking you for your personal information, please notify us as provided in this section.

**Usage Data.** Sciton reserves the right to collect system usage data from time to time for the purpose of running diagnostics and improving usability and performance of the system. Data collected will not contain any patient identification information.

CUSTOMER

**Name:** Russell Bigler  
**Title:** Chairman, Board of Governors  
**Date/Time:**

*Hasanain Kadhim*  
SCITON, INC.

**Name:** Hasanain Kadhim  
**Title:** Service Contract and Paid Services Manager  
**Date/Time:** 06/30/2023





## BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

July 19, 2023

**Subject:** Proposed Retroactive Amendment No. 2 to the Memorandum of Understanding (MOU) with Kern Behavioral Health and Recovery Services (KernBHRS)

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board reapprove the proposed Amendment No. 2 to the MOU (062-2021) with KernBHRS to update Exhibit D – Description of Standards and Services – Crisis Services to include information about the transfer of LPS patients for court hearing purposes, to update Exhibit J – Credentialing language, and to add Exhibit K to allow for the additional treatment of Electroconvulsive Therapy.

The current MOU defines for the provision of the following services:

- Reach and Grow Outpatient Clinics
- Physician Services
- Psychiatry Graduate Medical Education Training Program
- Crisis Services
- Correctional Services
- STAT Laboratory Services

Kern Medical and KernBHRS have partnered closely for many years providing psychiatry services to the Medi-Cal population in the community. KernBHRS's out-patient clinics also serve as the primary training site for our third and fourth-year Residents and Fellows. This Amendment adds language to outline the procedure of transporting patients for their court hearings, to outline the new treatment of Electroconvulsive Therapy, and to update credentialing reporting. This Amendment is retroactive due to a court issue regarding transportation that needed to be resolved prior to entering into this Amendment

Your Board previously approved this Amendment, but KernBHRS needed to add language to allow for contracting out the transportation service, therefore the previous approved Amendment No. 2 is rescinded and the revised Amendment No. 2 is presented for your approval.

Therefore, Kern Medical recommend that your Board approve the proposed retroactive Amendment No. 2 with KernBHRS, effective December 6, 2022 to June 30, 2024, with an undefined maximum payable, and authorize the Chairman to sign.

**AMENDMENT NO. 2**

**MEMORANDUM OF UNDERSTANDING BETWEEN  
KERN BEHAVIORAL HEALTH AND RECOVERY SERVICES  
AND  
KERN COUNTY HOSPITAL AUTHORITY**

**THIS AMENDMENT NO. 2** is entered into on \_\_\_\_\_ by and between the Kern Behavioral Health and Recovery Services (hereinafter “KernBHRS”), a political subdivision of the State of California, and Kern County Hospital Authority (“KCHA”), a local unit of government, which owns and operates Kern Medical Center (“KMC”).

**WITNESSETH:**

**A.** KernBHRS and KCHA are parties to Memorandum of Understanding (the “*MOU*”), Agreement Number 695-2021, dated November 16, 2021, entitled “Memorandum of Understanding Between Kern Behavioral Health and Recovery Services and Kern County Hospital Authority” to liaison with KCHA to participate in Grow and Reach Clinics, Physician Services, Psychiatry Training Program, Crisis Services, Correction Services, and STAT Laboratory services.

**B.** KernBHRS and KCHA amended MOU 695-2021 with XXX-2023 on July 18, 2023 to modify Exhibit G -1, Maximum Funding to include additional funding years.

**C.** KernBHRS and KCHA wish to amend MOU 695-2021 to modify Exhibit K, Electroconvulsive Therapy to retroactively include electroconvulsive therapy treatment responsibilities as of December 6, 2022.

**D.** KernBHRS and KCHA wish to amend MOU 695-2021 to modify Exhibit D, Description of Standards and Services-Crisis Services, to add Exhibit D-2, LPS Transportation to include information regarding transportation.

**E.** KernBHRS and KCHA wish to further amend MOU 695-2021 to modify Exhibit J, DHCS Required Quality Standards For Licensed, Waivered, Registered and/or Certified Providers to update credentialing language.

**NOW, THEREFORE, the parties agree as follows:**

**1.** Exhibit “K” Electroconvulsive Therapy shall be included after Exhibit “J”, which is attached hereto and made a part hereof.

**2.** Exhibit D-2 “LPS Transportation” to Exhibit D “Description of Standards and Services – Crisis Services” is attached hereto and incorporated herein by this reference.

**3.** Exhibit J, is deleted in its entirety and replaced by the attached Exhibit J.

**4.** To the extent that they do not conflict with the terms of this “Amendment No. 2,” all other sections and provisions of the Agreement shall remain in full force and effect. In the event there is any inconsistency between the terms hereof and the Agreement, this “Amendment No. 2” shall control.

**IN WITNESS TO WHICH**, each party to this MOU has signed this MOU upon the date indicated, and agrees for itself, its employees, officers, partners, and successors, to be fully bound by all terms and conditions of this MOU.

**COUNTY OF KERN:**  
Board of Supervisors

**Kern County Hospital Authority**  
Board of Governors

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Chairman

**“County”**

**“KCHA”**

**APPROVED AS TO CONTENT**  
Kern Behavioral Health and  
Recovery Services Department

**APPROVED AS TO CONTENT**  
Kern Medical Center

By Stacy Kuwahara  
Stacy Kuwahara, LMFT, Director

By   
Scott Thygerson,  
Chief Executive Officer

**APPROVED AS TO FORM:**  
Office of the County Counsel

**APPROVED AS TO FORM:**  
Legal Services Department

By Kyle W. Holmes  
Kyle Holmes, Deputy

By   
Shannon Hochstein, Hospital Counsel

## **EXHIBIT “K” – DESCRIPTION OF STANDARDS AND SERVICES ELECTROCONVULSIVE THERAPY**

### **A. KCHA will be administering Electroconvulsive Therapy (ECT) services as outlined below:**

#### **1. Requirements Specific to Voluntary/Involuntary Patients**

- a) ECT may be administered to voluntary and involuntary patients, including patients under conservatorship, **when all of the following conditions are met:**
  - 1) The Attending Physician designated as the primary service or the ECT Psychiatrist enters documentation in the medical record of the diagnosis, that all other reasonable treatment modalities have been carefully considered, and that ECT is indicated and is the least drastic alternative available for this patient at this time.
  - 2) Such statement in the treatment record shall be signed by the Attending Physician **and** the ECT Psychiatrist.
  - 3) At the time of the recommendation for ECT of an involuntary patient who has not given written consent, KCHA will contact the Kern County Public Defender (hereinafter referred to as “PD”) for their consult as to the capacity of proposed patient per the Welfare and Institutions Code.
- b) A review of the patient’s medical record is conducted by a committee of two physicians, at least one of whom shall have personally examined the patient. One physician shall be appointed by Kern Medical and one shall be appointed by the local behavioral health director [KernBHRS]. Both shall be either board-certified or board-eligible psychiatrists or board-certified or board-eligible neurologists.
  - 1) Persons who serve on these review committees shall not otherwise be personally involved in the treatment of the patient whose case they are reviewing.
  - 2) It shall be the responsibility of the KernBHRS Director to promulgate a list of physicians eligible to serve as local behavioral health director appointees to pre-treatment review committees. Kern Medical shall select one physician from this list who is available to participate in this process. The physician selected from this list is considered “appointed by the KernBHRS Director.” This KernBHRS physician will have access to patient’s medical record in order to participate in the committee review.
  - 3) This review committee must unanimously agree with the ECT Psychiatrist’s determinations. Such agreement shall be documented in the patient’s medical record and on the Pre-Treatment Review Committee Statement signed by both physicians.

#### **KernBHRS Responsibilities:**

- 1. KernBHRS Director shall promulgate a list of physicians eligible to serve as an appointee to the pre-treatment review committees. This physician must not be personally involved in the treatment of the patient who is being reviewed. This physician will be on staff at KernBHRS.

Kern Medical shall select one physician from the list provided and that selection shall be considered “appointed by the local behavioral health director.”

### **KCHA Responsibilities:**

1. KCHA shall select one physician from the eligible KernBHRS list of physicians to serve as one half of the review committee on behalf of KernBHRS. Notice of selected physician shall be provided to KernBHRS Medical Services Administrator and Medical Director.
2. KCHA shall appoint one physician to serve as one half of the review committee on behalf of KCHA.
3. If the involuntary patient does not consent to the ECT treatment and the ECT treating physician, the attending physician, and the public defender believe that the patient does not have capacity to give consent, then a petition will need to be filed in Superior Court to determine the patient’s capacity to give consent.

### **State Reporting Requirements**

1. Quarterly, Kern Medical shall report to Kern BHRS, utilizing the States Convulsive Treatments Administered Quarterly Report. Reports shall be made regardless of whether or not any ECT treatment methods were used during the quarter.
  - a. When more than one seizure is induced in a single treatment session, each seizure shall be considered a separate treatment for records-keeping and reporting purposes.
2. KernBHRS shall transmit reports received to the Director of the State Department of Health Care Services, or to the office designated by the Director, by the 15<sup>th</sup> day of the month following the end of the quarter.
3. Likewise, any physician who considers ECT a service that the physician provides, and whose use of ECT is not included in any facility’s report, must submit a quarterly report to the local behavioral health director even if such treatment was not administered during that particular quarter.
4. Quarterly, KernBHRS shall forward to the Medical Board of California any records or information received from the quarterly ECT reports indicating violation of the law and the regulations that have been adopted thereto.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

## EXHIBIT D-2 – LPS TRANSPORTATION

Transportation agreement of Kern County Hospital Authority's Behavioral Health Unit (BHU) and Kern Behavioral Health and Recover Services (KernBHRS) to transport patients to court for hearings (also referred to as "hearings") related to their involuntary hold pursuant to the Lanterman Petris Short (LPS) Act.

This amendment shall apply to any individual who is on an involuntary hold pursuant to the LPS act from Kern County, or one of the counties that Kern County currently has an MOU with to accept. This amendment shall not apply to individuals who are admitted to the BHU for other purposes, or who are residents of any other county.

### **Kern Medical Will:**

- Notify KernBHRS or a KernBHRS contracted transportation provider of the filing of any petition that will lead to a hearing as soon as that information becomes available, to allow KernBHRS or a KernBHRS contracted transportation provider the most time to coordinate any necessary transportation of patient to said hearing.
- This information should be passed via e-mail to: [CourtTransport@KernBHRS.org](mailto:CourtTransport@KernBHRS.org)
- Once a time and date for the hearing is known to BHU staff, that information shall also be relayed, via email to the above address.
- When legally appropriate, BHU shall request that a hearing be held virtually to mitigate any safety risk to the patient and/or the public. This request can be made through County Counsel.
- Provide information of patient's current needs to KernBHRS or KernBHRS contracted transportation provider to facilitate a safe transport including but not limited to any elopement risk, risk of violence, suicide risk, and any pertinent medical conditions within 8 hours of receiving the transportation notice.
  - Note: some medical conditions (i.e. non-ambulatory status) will require additional planning and collaboration.
- Specific plans for the hand-off and return of the patient will be worked out between Kern Medical and KernBHRS or its contracted transportation provider on a case-by-case basis, prior to the time for pick up.
- Maintain the patient as admitted, on the LPS hold, to BHU while away from the facility.
- If medication is scheduled to be administered, Kern Medical is responsible for administering the medication for the client prior to leaving the BHU and at other intervals as prescribed (See KernBHRS/Contracted Transportation Provider section for information on obtaining medication during the day). If the patient is to be away from the hospital for more than 4 hours, Kern Medical will provide needed food for the patient.
- Document the time, date, and reason the patient will be absent from the BHU in the electronic health record.

### **KernBHRS/Contracted Transportation Provider Will:**

- KernBHRS or its contracted transportation provider will communicate the actual time of pickup as soon as that time is known, sending this information via [KernMedicalBHU@KernMedical.com](mailto:KernMedicalBHU@KernMedical.com), including an estimate on the length of time patient will be away from the BHU.
- KernBHRS or its contracted transportation provider will utilize secure vehicle for transportation and staff for client supervision during the court proceedings. KernBHRS or its contracted transportation provider will transport the patient to their court hearing.

- KernBHRS or its contracted transportation provider will meet BHU staff at the BHU to allow for patient hand off to occur in a controlled environment. Upon return, patient will be returned to BHU.
- If the patient is away from the hospital during the time that afternoon medication will be administered, KernBHRS or its contracted transportation provider will transport the patient back to the hospital during the lunch hour for administration. County Counsel will work with the court to ensure that enough time is given to the parties to ensure that this can occur.
- Notify the BHU ((661) 326-2715 - ask for the Charge Nurse) if patient's hold is retained and is being returned to BHU, and/or the hold is dropped, and the patient is released or if the patient is returned to the BHU for discharge.
  - KernBHRS or its contracted transportation provider will encourage the patient to return to the BHU if the hold is dropped to retrieve their belongings and complete the hospital discharge process with any necessary/required medications and discharge paperwork. Note: once the patient is released from their hold by the court, he/she has the right to refuse to return to the hospital, but the BHU will be notified regardless.
- Appropriately document the encounter in the KernBHRS Electronic Health Record per KernBHRS or its contracted transportation provider's policy and procedures.
- KernBHRS or its contracted transportation provider staff will follow policy and procedures regarding incidents of crisis intervention and AWOLs during court transportations.

In order to ensure that all parties are on the same page regarding potential hearing timeframes (for notice purposes), the below information is provided. Note that this information is only a rough timeframe for the holding of hearings and is subject to change per court availability.

**WRITS AND RIESES:**

- Petitions filed on Monday are heard Tuesday at 1:30PM.
- Petitions filed on Tuesday, Wednesday, and Thursday before 10:30AM are heard Thursday at 1:30PM.
- Petitions filed after 10:30 on Thursday are heard either Friday or Monday at 1:30PM at the court's discretion.
- Petitions filed on Friday are heard Tuesday at 1:30PM.
- Patients may appear remotely for these hearings, if they so desire.

**POST CERTIFICATION HOLDS:**

- The initial hearing on this type of petition will be heard the Wednesday following its' filing at 1:30PM. The patient may be able to appear remotely for this hearing, if they so desire.
- Any bench or jury trial will be set between the parties and the court and will require that the patient be personally present, unless waived by counsel.

\*\*\* Please note, these hearing times are the schedule at the time of the signing of this amendment. They are subject to change at the will of the court. Please check with Court or County Counsel for current information.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

## **EXHIBIT “J” – DHCS REQUIRED QUALITY STANDARDS FOR LICENSED, WAIVERED, REGISTERED AND/OR CERTIFIED PROVIDERS**

**A.** KernBHRS and KCHA shall adhere to the California Department of Health Care Services’ (DHCS) Title 42 of the Code of Federal Regulations, Part 438.214 and to DHCS MHSUDS Information Notice No. 18-019, in order to ensure that providers are licensed, registered, waived, and/or certified as required by state and federal law.

**B.** Pursuant to California Business and Professions Code Section 809.08, KCHA desires to share peer review information with KernBHRS to assist KernBHRS in its credentialing, evaluation, and peer review functions.

**C.** KCHA Human Resources shall observe the following requirements for Licensed Practitioners of the Healing Arts (LPHA), Clinicians and Nurses (Registered Nurse or Vocational Nurse) working on the KCHA Behavioral Health Unit (BHU). For all licensed, waived, registered and/or certified Practitioners, KernBHRS will verify KCHA’s primary source verification efforts either through an auditing process of KCHA’s primary source verification efforts or through KCHA submitting these documents directly to the KernBHRS Credentialing Team or designee.

**a. PRIMARY SOURCE VERIFICATION** shall be required in the following areas at the time of Nurse hire and prior to expiration of licensure and/or certification, as applicable.

- i. The appropriate license and/or board certification or registration, as required for the particular provider type;
- ii. Evidence of graduation or completion of any required education, as required for the particular provider type, this may be satisfied by the licensing agency as a condition of license issuance;
- iii. Proof of completion of any relevant medical residency and/or specialty training, as required for the particular provider type; and
- iv. Satisfaction of any applicable continuing education requirements, as required for the particular provider type.
- v. Work history;
- vi. National Provider Identifier number;
- vii. Practitioner information, if any, entered in the National Practitioner Data Bank, when applicable. See <https://www.npdb.hrsa.gov/> ;
  - i. History of sanctions from participating in Medicare and/or Medicaid/Medi-Cal: providers terminated from either Medicare or Medi-Cal, or on the Suspended and Ineligible Provider List, may not participate in the Plan’s provider network. This list is available at: <http://files.medical.ca.gov/pubsdoco/SandILanding.asp> KCHA uses Provider Trust to validate the suspended and ineligible provider list.



j. History of sanctions or limitations on the provider's license issued by any state's agencies or licensing boards;

k. Employee Attestation consisting of five (5) required elements:

- Any limitations or inability that affect the provider's ability to perform any of the position's essential functions, with or without accommodation.
- A history of loss of license or felony conviction;
- A history of loss or limitation of privileges or disciplinary activity;
- A lack of present illegal drug use; and
- The application's accuracy and completeness

D. KCHA Credentialing shall observe the following requirements for Physician, non-physician Licensed Practitioner of the Healing Arts (LPHAs – Nurse Practitioner and/or Physician Assistant) Credentialing working on the BHU:

a. **PRIMARY SOURCE VERIFICATION** shall be required in the following areas at the time of Practitioner credentialing and prior to expiration of licensure and/or board certification, as applicable.

- i. The appropriate license, as required;
- ii. The appropriate board certification as required;
- iii. Evidence of graduation or completion of any required education, as required for the particular provider type;
- iv. Proof of completion of any relevant medical residency and/or specialty training, as required for the particular provider type; and
- v. Work history;
- vi. Satisfaction of any applicable continuing education requirements, as required for the particular provider type.

1. **ADDITIONAL INFORMATION** KCHA will verify and document the following information from each Practitioner every two (2) years thereafter, as applicable.

- a. Work history;
- b. Hospital and clinic privileges in good standing;
- c. History of any suspension, reduction or revocation or of clinical privileges;

- d. Current, unrestricted Drug Enforcement Administration certification;
- f. Current malpractice insurance in an adequate amount, as required for the particular Practitioner;
- g. History of liability claims against the Practitioner;
- h. Practitioner information, if any, entered in the National Practitioner Data Bank, when applicable. See <https://www.npdb.hrsa.gov/> ;
- i. History of sanctions from participating in Medicare and/or Medicaid/Medi-Cal: providers terminated from either Medicare or Medi-Cal, or on the Suspended and Ineligible Provider List, may not participate in the Plan's provider network. This list is available at: <http://files.medical.ca.gov/pubsdoco/SandILanding.asp> KCHA currently uses [Search the Exclusions Database | Office of Inspector General \(hhs.gov\)](#) and SAM.gov to verify and monitor any sanctions or exclusions.
- j. History of sanctions or limitations on the provider's license issued by any state's agencies or licensing boards;
- k. Employee Attestation consisting of five (5) required elements:
  - Any limitations or inabilities that affect the provider's ability to perform any of the position's essential functions, with or without accommodation.
  - A history of loss of license or felony conviction;
  - A history of loss or limitation of privileges or disciplinary activity;
  - A lack of present illegal drug use; and
  - The application's accuracy and completeness

2., To avoid duplicating credentialing efforts by both KernBHRS and KCHA, after a physician has been credentialed by KCHA, KernBHRS will accept a letter from KCHA credentialing staff indicating that a physician was fully credentialed by their organization and in adherence with state and federal guidelines that dictate credentialing standards.

**E. EXCHANGE.** KCHA agrees to provide KernBHRS with information regarding a Licensed Practitioners of the Healing Arts (LPHA), Clinicians and Nurses (Registered Nurse or Vocational Nurse) credentialing files as outlined in Section C of this Exhibit. The requested information will be limited to fulfil the requirements of KernBHRS' LPHA and Nurses credentialing audits. The request shall be complied with in an efficient manner.

**F. CONFIDENTIALITY.** KernBHRS and KCHA recognize that the information exchanged under this Agreement is confidential. To the extent such information is protected by Section 1157

of the California Evidence Code, it is intended to remain protected after transmission under this Agreement. KernBHRS commits to maintain the confidentiality of information received under this Agreement and to use the information received only for its own credentialing, peer review, evaluation and quality improvement purposes and not to further disclose such information without written consent of KCHA.

**G. INDEMNIFICATION.** County shall indemnify, defend, and hold harmless KCHA and Kern Medical for any and all claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, resulting in any manner, directly or indirectly, from KernBHRS' improper release or disclosure of information shared pursuant to this Agreement and Section 809.08. This indemnity obligation shall survive the expiration or termination of the Peer Review Sharing Agreement with respect to information provided to KernBHRS by KCHA.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**



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

July 19, 2023

**Subject:** Update on Section 218 Election

**Recommended Action:** Receive and file

**Summary:**

Kern Medical is working with representatives from the State Social Security Administration (SSSA) (the designated agent of the federal Social Security Administration) to conduct an election under Section 218 of the Social Security Act, which governs social security and Medicare coverage for state and local government employees. This election is required to continue our current practice of enabling employees to participate in the social security system. Currently, employees who work for Kern Medical and participate in KCERA receive the KCERA pension as well as social security benefits upon retirement or permanent disability. In order for this to continue, the SSSA is requiring that we conduct an election to document and formalize this practice.

By way of history, in 1957 the employees of the County of Kern decided through a Section 218 election to have social security deducted from their paychecks to supplement their KCERA retirement benefits. Although this election covered Kern Medical employees while the hospital was a department of the County, the SSSA has determined the 1957 election does not apply to Kern Medical since its transfer by the County to the hospital authority on July 1, 2016, and that employees *must* vote to maintain their eligibility in social security. This new election is the first step in the process to ensure our employees continue to receive social security benefits.

On November 13, 2019, the Board adopted a resolution authorizing Kern Medical to hold a Section 218 election to provide for continued participation of eligible Kern Medical employees in the social security program.

SSSA has scheduled a Section 218 election for August 17, 2023. Continued participation in the federal social security program requires a "YES" vote of at least 51% of the Kern Medical employees who are members in KCERA (approximately 800 employees +/-).

Therefore, it is recommended that your Board receive and file this update on the Section 218 election.



# **Kern County Hospital Authority 218 Election Update**

July 2023

# Background

- Public employees who participate in a retirement “system” (i.e. KCERA) are not eligible to participate in social security as a general rule
- Exception can be made if employees hold an election and vote to participate or continue participating in social security program
- In 1957, County employees voted to participate in both social security and KCERA
- When Kern Medical transitioned to KCHA, understanding was that this 1957 election applied to our employees
- State Social Security Administration (SSSA) notified Kern Medical in 2020 that we must hold its own employee election to continue social security contributions

# What's Next

- Per SSSA KCHA must formalize continuance in social security program
- Board approved resolution Nov 13, 2019; process was paused due to COVID-19
- Election must yield 51% (~800 employees) yes vote to continue
- Social Security Administration will schedule:
  - On-site employee education about the purpose and goal of the election on July 18, 2023
  - Election date is August 17, 2023
  - SSSA estimates processing will take 18-24 months





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

July 19, 2023

**Subject:** Proposed Compliance Program for fiscal year 2023-2024

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

A compliance program is a set of internal policies and procedures that is put into place to assist Kern Medical in complying with the law. An effective compliance program can enhance an organization's operations, improve quality of care, and reduce overall costs. It can also help identify problems upfront and make it possible to address them before they become systemic and costly.

The Office of Inspector General (OIG) issues guidance on compliance programs, including, most importantly, the seven basic elements OIG has long identified as fundamental to any compliance program.

The proposed Compliance Program outlines these seven elements and how Kern Medical plans to address these fundamental compliance elements. These compliance elements include the following:

First element is written policies and procedures, which have been created but will need to be reviewed and updated in this coming year.

Second element is to have a compliance professional. Kern Medical currently has an interim compliance and privacy officer but continues to search for permanent staff to keep up with federal and state compliance requirements and recommendations.

Third element is to conduct effective training. Kern Medical educates employees through teaching modules and in-person presentations making sure that employees are aware and understand the importance of Kern Medical's compliance program policies.

Fourth element is effective communication between the compliance office and all employees. Kern Medical has comment boxes, an anonymous hotline, and an open door policy to give employees a way to report misconduct and the reassurance that they will be protected from retaliation.

Fifth element is an internal monitoring process. Conducting audits is the heart of an effective compliance program. Monthly compliance meetings and investigations identify problems from time to time, and create creative solutions to minimize or resolve the issues.

Sixth element is the enforcement of compliance standards. It is not only about developing policies, distributing them, and educating employees, but making sure employees are actually following them and acting when someone is not complying with these standards.

Seventh element is to promptly and adequately respond to issues. When the Compliance office receives a report of suspected misconduct or other compliance-related issue, an investigation is started right away and steps are taken to resolve the issue as quickly as possible.

A robust compliance program is essential to achieving the standards of the seven elements and the first step is informing and integrating the plan into the management of Kern Medical.

Therefore, it is recommended that your Board approve the proposed Compliance Program for fiscal year 2023-2024 in support of Kern Medical's efforts to conduct a robust, organization wide enforced and documented Compliance Program, and authorize the Chairman to sign.

## COMPLIANCE PROGRAM: PURPOSE AND OVERVIEW

Kern County Hospital Authority, ("Kern Medical Center") through its Board of Governors and its administration, is committed to quality and efficient patient care; high standards of ethical, professional and business conduct; and full compliance with all applicable federal and state laws affecting the delivery or payment of health care, including those that prohibit fraud and abuse or waste of health care resources.

The purpose of this Compliance Program and its component policies and procedures is to establish and maintain a culture within Kern Medical Center that promotes quality and efficient patient care; high standards of ethical and business conduct; and the prevention, detection and resolution of conduct that does not conform to Kern Medical Center's standards and policies, applicable law, and health care program or payor requirements. The Compliance Program applies to all Kern Medical Center personnel, including but not limited to its Board of Governors, administration, physicians and other practitioners, employees, volunteers, and other entities providing services on behalf of Kern Medical Center (collectively "Kern Medical Center personnel"). The Compliance Program includes the following elements:

1. Written standards, policies and procedures which promote Kern Medical Center's commitment to compliance with applicable laws and regulations. *Policy COM-LD-417*
2. The designation of a Compliance Committee charged with the responsibility of implementing and monitoring the Compliance Program. *Policy COM-LD-616*
3. Regular, effective education and training programs for all affected Kern Medical Center personnel as appropriate to their functions. *Policy HRM-HR-708*
4. A process to receive complaints concerning possible Compliance Program violations, procedures to protect the anonymity of complainants to the extent possible, and policies that protect complainants from retaliation. *Policy COM-LD-635*
5. A process to respond to allegations of improper activities and the enforcement of appropriate disciplinary action against Kern Medical Center personnel who have violated laws, regulations, health care program requirements, or Kern Medical Center policies. *Policy COM-LD-630*
6. Periodic audits or other methods to monitor compliance and assist in the reduction of problems in any identified areas. *Policy COM-LD-620*
7. A process for investigating and resolving any identified problems. *Policy COM-LD-645*

As demonstrated by the signatures below, the Compliance Program is enacted at the direction and with the support of the Board of Governors and hospital administration.

APPROVED BY:

---

Chairman, Board of Governors

---

Chief Executive Officer



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

July 19, 2023

**SUBJECT:** Proposed Agreement with C-S and J Pathology Medical Group, Inc. for Professional Medical Services in the Department of Pathology from July 19, 2023, through July 18, 2024, in an amount not to exceed \$20,000

**Requested Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical is requesting Board approve the proposed Agreement for Professional Service with C-S and J Pathology Medical Group, Inc. (Contractor) for medical services in the Department of Pathology. Contractor will provide one (1) week of services due to upcoming absences of the full-time pathologists within the department. Contractor will be responsible for all related expenses in the provision of medical services.

Counsel cannot approve as to form due to non-standard terms because Contractor is not contracted for General Liability Insurance and is unable to add the Kern County Hospital Authority as an additional insured on their automobile insurance policy. Attempts were made to negotiate the non-standard terms to no avail. The Contractor does agree to indemnify the Kern County Hospital Authority for negligent acts and omissions that would be covered by the requested insurance coverage.

Although there is an increased liability risk associated with the proposed Agreement, Kern Medical still recommends that your Board approve the proposed Agreement for Professional Services with C-S and J Pathology Medical Group, Inc. for professional medical services to ensure appropriate coverage in the Department of Pathology, in an amount not to exceed \$20,000, for a term of one (1) year from July 19, 2023, through July 18, 2024, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – C-S and J Pathology Medical Group, Inc.)**

This Agreement for Professional Services (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and C-S and J Pathology Medical Group, Inc., a California professional medical corporation (“Contractor”), with its principal place of business located at 352 Lincoln Drive, Ventura, California 93001.

**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 Pathology (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 is specially trained, experienced, expert, and competent to perform such services;

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall commence July 19, 2023 (the “Effective Date”), and shall end July 18, 2024, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

## 2. Obligations of Contractor.

2.1 Specified Services. Contractor shall provide mutually agreed upon as-needed coverage for the pathology service at KMC. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

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, Robert E. James, III, M.D., Ph.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, and certified by the American Board of Pathology in pathology-anatomic/pathology-clinical-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) recent anatomic and clinical pathology experience, (ii) a background to include experience working with other clinical departments, teaching residents and medical students, participating in hospital committees, and working on pathways and evidence-based guidelines, and (iii) ongoing acute care hospital experience.

2.7 Rights and Duties. Robert E. James, III, M.D., Ph.D., shall act as the authorized agent for Contractor in all matters relating to the performance of Group Physicians under this Agreement. Contractor shall require Group Physicians to participate in the educational and committee activities of the KMC medical staff. Contractor shall, by contract, obligate Group Physicians to comply fully with all duties, obligations and restrictions imposed upon Contractor under this Agreement.

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

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

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

2.11 Quality Improvement and Risk Management. Contractor agrees that all Group Physicians shall participate in (i) the quality improvement and risk management programs of KMC and serve on such committees as may be required; (ii) ongoing quality improvement activities, such as audits, which will be conducted annually in the Department in order to



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

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

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

### 3. Obligations of Authority.

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

3.2 Space. KMC shall furnish for the use of Contractor and Group Physicians 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 and Group Physicians shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor or any Group Physician of any portion of the Premises, and insofar as Contractor or Group Physicians may use a portion of said Premises, Contractor and Group Physicians do so as licensees only, and Authority and KMC shall, at all times, have full and free access to the same.

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

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

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

4. **Payment for Services.**

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

4.1.1 Coverage. Authority shall pay Contractor a per diem rate of \$1,200 per day for coverage.

4.1.2 Limitations on Compensation. Except as expressly stated herein, Contractor shall not receive any benefits from Authority, including without limitation, health benefits, sick leave, vacation, holidays, deferred compensation or retirement.

4.1.3 Payment All-inclusive. The compensation paid to Contractor is inclusive of accommodations, mileage reimbursement, car rental, meals, and incidental expenses.

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

4.2 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$20,000 over the one (1) year term of this Agreement.

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

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

4.5 **Professional Fee Billing.** KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients during the term of this Agreement. All professional fees generated by Contractor for services rendered to KMC patients at KMC or a KMC location during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of KMC, whether received by KMC or by Contractor 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.

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

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

6. **Anti-referral Laws.** Contractor acknowledges that it is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral

of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

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

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all its activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California 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 the 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 acknowledges that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.

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

15.4 **Medical Staff and Committee Records.** All records, files, proceedings and related information of Group Physicians, KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor and Group Physicians. Neither Contractor nor Group Physicians shall

voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC.

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

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

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

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

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

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

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

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

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

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



24. **Indemnification By Contractor.** Contractor shall assume liability for and indemnify and hold Authority and its officers, directors, employees, agents, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of Authority's Counsel, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way related to: (a) Contractor's failure to comply with the terms of this Agreement; (b) any negligent act or omission of Contractor or its officers, directors, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives, except as otherwise set forth in section 23 herein. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including Authority property; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor; or (c) wages, salaries, employee benefits, income taxes, FICA, FUTA, SDI and all other payroll, employment or other taxes, withholdings and charges payable by Contractor, or on behalf of, any other person employed by or contracted with Contractor.

25. **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.

26. **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.

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:

C-S and J Pathology Medical Group, Inc.  
352 Lincoln Drive  
Ventura, California 93001  
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 without Cause. Either party may terminate this Agreement, without cause, upon thirty (30) days' prior written notice to the other party.

36.2 Immediate Termination. Authority shall have the right to terminate this Agreement at any time upon the occurrence of any one or more of the following events:

- A) Breach of this Agreement by Contractor where such breach is not cured within thirty (30) calendar days after Authority gives written notice of such breach to Contractor;
- B) Authority ceases operations;
- C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
- D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;
- E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;
- F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
- G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;
- H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties

on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;

- I) 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;
- J) Contractor makes an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC;
- K) Commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or
- L) The loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

37. **Effect of Termination.**

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

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

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

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

38. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

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

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

C-S AND J PATHOLOGY MEDICAL GROUP, INC

By   
Its President

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Scott Thygerson  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

**EXHIBIT "A"**  
**IRS FORM W-9**  
**[TO BE ATTACHED]**





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

July 19, 2023

**Subject:** Proposed Agreement with Alton Scott Thygerson, a contract employee, for professional services as chief executive officer of Kern County Hospital Authority

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve an Agreement with Alton Scott Thygerson, as a contract employee, for professional services as chief executive officer of Kern County Hospital Authority, effective July 19, 2023. Mr. Thygerson has served as chief executive officer of Kern County Hospital Authority since December 1, 2021, as an employee of Meridian Healthcare Partners, an independent contractor. Mr. Thygerson has over 25 years of experience as a health care executive and consultant in strategic planning, operations, and development, including serving at Dignity Health, Trinity Health, and the Blue Cross Blue Shield Association. Since joining the authority on December 16, 2016, Mr. Thygerson has served as the organization's Chief Strategy Officer, its President of Hospital and Clinic Operations starting in November 2019. Mr. Thygerson earned a Master of Health Administration from Indiana University.

Mr. Thygerson will function as the full-time chief executive officer of the authority. As part of his job duties, Mr. Thygerson will plan, direct, and manage the current operations, future growth and program development for the authority ensuring responsible use of fiscal, human, and physical resources. In conjunction with your Board, Mr. Thygerson will also develop goals and objectives for the authority, and will be responsible for ensuring that the authority delivers high quality, cost effective care, and for coordinating development of services and facilities to fulfill the organization's mission.

The initial term of the Agreement is three years, effective July 19, 2023, with an option to renew for one additional term of two years.

Initial base compensation shall start at \$607,592 annually, plus the customary benefit package offered by the authority including social security-FICA, retirement, health benefits, life insurance, and car allowance. The initial base compensation shall be considered the "A" step of the salary range. The position will have five (5) step levels, with a maximum adjustment of two percent (2%) per level annually. The maximum compensation payable,<sup>1</sup> excluding benefits, will not exceed \$1,970,261 during the initial term and \$1,377,533 during the renewal term, with total compensation not to exceed \$3,347,794 over the potential five-year term, assuming the agreement is renewed.

---

<sup>1</sup> The maximum compensation payable includes base salary, car allowance and the potential for incentive compensation.

There shall also be an annual incentive compensation program with maximum earnings payable not to exceed three percent (3%) of annual base compensation. Your Board and Mr. Thygerson will develop mutually agreed upon specific reasonable and achievable performance-based metrics within 90 days of the effective date of the Agreement. The performance-based metrics will be incorporated into the Agreement as an amendment.

Appropriate terms for cancellation and separation by either party have been included. In the event of an "involuntary" termination of Mr. Thygerson by the Board, the authority will continue to pay Mr. Thygerson the agreed upon then-current base salary, including benefits, for a period of 12 months following such termination. Involuntary termination is defined as termination of employment for reasons other than cause, material change in the duties or authority of the chief executive officer, or dissolution of the authority as a public entity.

The Agreement has been developed in accordance with the direction provided by your Board and is similar in nature to executive contracts used in other hospitals and healthcare institutions. Mr. Thygerson has agreed to the terms of the Agreement and has executed his portion accordingly.

Therefore, it is recommended that your Board approve the Agreement with Alton Scott Thygerson for services as chief executive officer of Kern County Hospital Authority for an initial term of three years, effective July 19, 2023, with an option to renew for one additional term of two years, in an amount not to exceed \$1,970,261 during the initial term and \$1,377,533 during the renewal term, with total compensation not to exceed \$3,347,794 over the term, plus applicable benefits, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Alton Scott Thygerson)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Alton Scott Thygerson “Executive”).

**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 desires to secure the services of Executive to serve as chief executive officer of Authority, as such services are unavailable from Authority resources, and Executive desires to accept such employment on the terms and conditions set forth in this Agreement; and

(c) Executive is specially trained, experienced, expert, and competent to perform 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 initial term of this Agreement (“Initial Term”) shall be for a period of three (3) years, commencing as of July 19, 2023 (the “Commencement Date”), and shall end on the three (3) year anniversary of the Commencement Date, unless earlier terminated pursuant to other provisions of the Agreement as herein stated. At the end of the Initial Term and each Renewal Term (as hereinafter defined), if any, this Agreement may be renewed for one (1) additional term of two (2) years (“Renewal Term”), but only upon mutual written agreement of the parties. As used herein, the “Term” of this Agreement shall mean the Initial Term and the Renewal Term. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

2. **Employment.** Executive shall render full-time professional services to Authority in the capacity of chief executive officer. Executive shall at all times, and to the best of his ability, perform all duties that may be required of him by virtue of his position as chief executive officer and all duties set forth in Bylaws for Governance and in policy statements of the Board of Governors (“Board”). Executive shall plan, direct and manage the current operations, future growth and program development of Authority while ensuring responsible use of fiscal, human and physical resources. In conjunction with the Board, Executive shall develop goals and

objectives for Authority, and shall be responsible for ensuring that Authority delivers high quality, cost effective care and for coordinating development of services and facilities to fulfill the organization's mission. Executive is hereby vested with authority to act on behalf of the Board in keeping with policies adopted by the Board, as amended from time to time, and shall perform in the same manner any special duties assigned or delegated to him by the Board. A description of the position including key responsibilities and goals and objectives is set forth in Exhibit "A," attached hereto and incorporated herein by this reference.

### 3. **Compensation Package.**

3.1 **Annual Compensation.** Executive shall work full time, which is a minimum of eighty (80) hours per biweekly pay period, and will be compensated with cash and other value as described below in this paragraph 3.1 ("Annual Salary").

3.1.1 **Compensation Methodology.** Authority shall pay Executive in accordance with a five (5) level base salary range (Steps A through E) starting at Step A, with a maximum adjustment of two percent (2%) per level. The step levels and corresponding salary ranges are set forth in Exhibit "B," Compensation Schedule, attached hereto and incorporated herein by this reference.

3.1.2 **Initial Base Compensation.** Authority shall pay Executive an initial base salary of \$23,368.92 biweekly not to exceed \$607,592 annually. Executive shall be subject to an automatic salary adjustment in accordance with the salary schedule set forth in Exhibit "B," commencing July 19, 2024, and annually thereafter.

3.1.3 **Annual Incentive Compensation.** Authority shall provide Executive with an annual incentive compensation program with maximum earnings payable at the end of each Employment Year not to exceed three percent (3%) of annual base compensation. The Board and Executive shall develop mutually agreed upon specific reasonable and achievable performance-based metrics within ninety (90) days of the Commencement Date, which shall be incorporated herein by an amendment to this Agreement.

3.1.4 **Biweekly Payment.** Executive 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 Executive shall be subject to all applicable federal and state taxes and withholding requirements.

3.1.5 **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 Executive under this Agreement.

3.2 **Severance Payment.** Executive will be entitled to receive certain severance benefits as described below if Executive experiences a termination of employment for any reason other than for cause (an "Involuntary Termination"), as defined in section 29 herein.

3.2.1 Severance Benefit. If Executive experiences an Involuntary Termination then Authority will continue paying Executive his base salary as of the effective date of termination, exclusive of incentive compensation, for a period of twelve (12) months in accordance with Authority's standard payroll procedures. The severance payments will begin on the first payroll date occurring within ten (10) days of the effective date of termination and remain in effect regardless of whether Executive seeks, accepts or undertakes other employment during this twelve (12) month period. All payments made by Authority to Executive under this subparagraph shall be subject to all applicable federal and state taxes and withholding requirements.

3.2.2 Health Care Benefit. If Executive is subject to an Involuntary Termination, and if Executive timely elects to continue his health benefits coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") following Involuntary Termination, then Authority will pay the monthly premium under COBRA for Executive and his eligible dependents, if any, until the earliest of (i) the close of the twelve (12) month period following the date of Involuntary Termination or (ii) the expiration of the continuation coverage under COBRA.

3.2.3 Retirement Benefit. If Executive is subject to an Involuntary Termination, Executive shall be entitled to continued participation in the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees until the close of the twelve (12) month period following the date of Involuntary Termination.

3.2.4 Release.

A) If Executive accepts any of the severance benefits or payments described in paragraph 3.2 herein, Executive will, on behalf of himself and his assigns, heirs, legal representatives and agents, release and forever discharge Authority and each of its officers, directors, members, managers, employees, agents, volunteers and authorized representatives and each of them separately and collectively (hereinafter referred to separately and collectively as the "Releasees") from any and all claims, liens, demands, actions, causes of action, suits, debts, contracts, promises, obligations, damages, liabilities, losses, costs and expenses of any nature whatsoever, known or unknown, in law or in equity, anticipated or unanticipated, conditional or contingent (collectively, "Actions and Liabilities"), which Executive now owns or holds, or at any time heretofore owned or held, or which Executive hereafter can, shall or may own or hold against any of the Releasees, which in each case arise out of or relate to Executive's employment by Authority, the termination of Executive's employment, any status, term or condition of such employment, Executive's service to Authority as chief executive officer, or any physical or mental harm or distress from such employment or service or from termination of such employment or service, including without limitation, (i) any and all claims under California statutory or decisional law pertaining to wrongful discharge, retaliation, breach of contract, breach of public policy, misrepresentation, fraud or defamation; (ii) any and all claims under the California Fair Employment and Housing Act, the California Labor Code, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment

Act, the Fair Labor Standards Act and the Americans with Disabilities Act; (iii) claims arising under any federal, state or local statute, regulation, or ordinance prohibiting discrimination on the basis of race, color, creed, religion, religious creed, sex, marital status, sexual orientation, gender, veterans status, genetic characteristics, pregnancy, childbirth or related medical condition, national origin, age, ancestry, citizenship status, mental or physical disability or handicap, medical condition, AIDS or related medical condition, arrest record, or other basis of discrimination; (iv) any and all claims for costs, expenses or attorneys' fees; and (v) any claims to rehire rights; provided, however, that claims for vested benefits and claims for workers' compensation and unemployment insurance benefits are not waived.

B) Nothing in the preceding subparagraph 3.2.4(a) shall operate to release, relieve, waive, relinquish, or discharge Authority from any obligation it may have to indemnify Executive pursuant to section 810 et seq. of the Government Code.

3.2.5 Waiver. Executive expressly understands and agrees that the releases contained in subparagraph 3.2.4(a) fully and finally release and forever resolve the matters released and discharged in such subparagraph, including those which may be unknown, unanticipated and/or unsuspected, and upon the advice of legal counsel, hereby expressly waives all benefits under section 1542 of the California Civil Code, as well as under any other statutes or common law principles of similar effect, to the extent that such benefits may contravene the provisions of subparagraph 3.2.4(a). Executive acknowledges that he has read and understands section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

3.3 Maximum Compensation Payable. The maximum compensation payable by Authority to Executive is \$1,970,261 during the Initial Term of this Agreement and \$1,377,533 during the Renewal Term of this Agreement, with total compensation not to exceed \$3,347,794 over the Term of this Agreement.

4. **Benefits Package**. Executive shall receive benefits from Authority as described below.

4.1 Retirement. Executive shall be eligible to participate in the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential 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. Executive 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 Executive any right to claim entitlement to benefits under any such retirement plan(s).

4.2 Health Care Coverage. Executive shall receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is twenty percent (20%) of the current biweekly premium. Executive is eligible for coverage the first (1st) day of the biweekly payroll period coincident with or next following the day he completes one (1) month of continuous service. Executive's initial hire date is the initial opportunity to enroll in the health plan. Executive must work at least forty (40) hours per biweekly pay period to be eligible for coverage.

4.3 Holidays. Executive shall be entitled to paid holidays subject to Authority policy, as amended from time to time. In addition, Executive shall be credited with three (3) floating holidays of eight (8) hours each per Employment Year.

4.4 Vacation. Executive shall be credited with vacation leave of 10.15 hours for each pay period of service, for a maximum accrual of two hundred forty (240) hours per Employment Year. In addition, Executive shall be credited with forty (40) hours of vacation leave each Employment Year. Total unused vacation leave accumulated shall not exceed a maximum of three hundred twenty (320) hours. No further vacation leave shall accrue as long as Executive has the maximum number of hours credited. Executive shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Executive's current hourly rate (i.e., current base salary divided by 2080 hours = hourly rate), less all applicable federal and state taxes and withholding requirements.

4.5 Sick Leave. Executive shall be entitled to sick leave subject to Authority policy, as amended from time to time. Executive will not be paid for accrued and unused sick leave upon termination of employment.

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

4.7 Continuing Education Reimbursement. Authority shall reimburse Executive for all approved reasonable and necessary expenditures related to continuing 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.

4.8 Flexible Spending Plan. Executive 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 Executive if he elects to participate in the plan.

4.9 Attendance at Meetings. Executive 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 Executive and the board. 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.

4.10 Automobile Allowance. Executive shall receive a monthly car allowance of \$1,500 per month.

4.11 Mileage Reimbursement. Authority shall reimburse Executive, on a per mile basis, for personal vehicle use at the current privately-owned vehicle (POV) mileage reimbursement rate established by the U.S. General Services Administration, when using his private vehicle to conduct hospital business beyond a fifty (50) mile radius of 1700 Mount Vernon Avenue, Bakersfield, California 93306.

4.12 Expense Reimbursement. Authority shall reimburse Executive for all approved and necessary business expenditures in accordance with Authority policy, as amended from time to time.

4.13 Dues. Authority agrees to pay dues to professional associations and societies of which Executive is a member in accordance with Authority policy, as amended from time to time.

4.14 Life Insurance. Authority shall provide Executive with a life insurance benefit in an amount not to exceed two (2) times Executive's base salary in an amount not to exceed \$1.5 million, according to the terms of the policy. Executive is eligible to receive the life insurance benefit on the first (1st) day of the month following ninety (90) days of continuous employment. Executive shall be responsible for any year-end tax consequence that may result from receipt of this benefit.

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

4.16 Disability Insurance. Executive 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 Executive if he elects to participate in the plan.

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

4.18 Authorized Absences. Notwithstanding any provision in this Agreement to the contrary, Executive shall be permitted to be absent from Authority during normal business hours for vacation or sick leave, or to attend professional meetings and outside professional duties in the healthcare field. Executive shall notify the Chairman, Board of Governors, or designee, in



advance of taking any vacation leave or other planned absence that exceeds three (3) business days.

4.19 **Limitation on Benefits.** Except as expressly stated herein, Executive shall receive no other benefits from Authority.

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

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

7. **Authority to Incur Financial Obligation.** It is understood that Executive, 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, except as may be lawfully directed or delegated by the Board of Governors.

8. **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.

9. **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 thirty (30) days of such negotiation period, this Agreement shall automatically terminate.

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

11. **Confidentiality.** Executive 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 7920.000 et seq. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive.

12. **Conflict of Interest.** Executive 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 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. Executive shall complete and file a “Statement of Economic Interest” with Authority disclosing Executive’s financial interests within thirty (30) days of the Commencement Date and annually thereafter.

13. **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.

14. **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. Executive 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. Executive and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

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. **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.

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

18. **Indemnification.** Authority shall defend and indemnify Executive for duties performed as chief executive officer to the same extent as would be afforded to a regular full-time Authority employee. Said duty of defense and indemnity shall not apply to intentional or willful misconduct, gross negligence, dereliction or criminal misconduct on the part of Executive, and

further shall not extend to any conduct, actions or activities which do not arise directly from the performance of this Agreement.

19. **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.

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 Executive, 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. Executive shall be given thirty (30) days' prior written notice in the event that Authority requires such an action.

22. **Nondiscrimination.** Neither party to this Agreement 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.

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 Executive. 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 Executive:

Alton Scott Thygerson  
c/o Kern Medical Center  
1700 Mount Vernon Avenue  
Bakersfield, California 93306

Notice to Authority:

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

25. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person or persons signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The execution and delivery by the parties of this Agreement and compliance with the terms hereof do not and will not (i) conflict with or result in a breach of the terms, conditions or provisions of any agreement, order or other instrument to which Executive or Authority is a party or subject to, (ii) constitute a default or event of default under any agreement, order or other instrument to which Executive or Authority is a party or subject to, (iii) result in a violation of any agreement, order or other instrument to which Executive or Authority is a party or subject to, or (iv) require any authorization, consent, approval or other action by or notice to any court, third party or governmental authority.

26. **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.

27. **Successors in Interest.** The provisions of this Agreement and obligations arising hereunder shall extend to and be binding upon and inure to the benefit of the assigns and successors of each of the parties hereto.

28. **Survival.** The provisions of sections 3.2 (Severance Payment), 7 (Authority to Incur Financial Obligation), 11 (Confidentiality), 17 (Governing), 18 (Indemnification), 19 (Liability of Authority), 24 (Notices), 27 (Successors in Interest), 29.2 (Effect of Involuntary Termination), 29.5 (Effect of Termination for Cause), and 30 (Effect of Termination) shall survive termination or expiration of this Agreement.

29. **Termination.**

29.1 **Involuntary Termination.** For purposes of this Agreement, “Involuntary Termination” shall mean that one of the following events occurs: (i) Authority terminates the employment of Executive for any reason other than cause; (ii) there is a material change in the duties or authority of Executive; or (iii) there is a dissolution of the hospital authority.

29.1.1 **Board Discretion.** The Board may, in its sole discretion and without cause, terminate the duties of Executive as chief executive officer. Such action shall require a majority vote of the entire Board and become effective upon written notice to Executive or at such later time as may be specified in said notice.

29.1.2 **Change in Duties.** The Board may, in its sole discretion, change the duties or authority of Executive so it can reasonably be found that Executive is no longer performing as the chief executive officer of Authority. Executive shall have the right, within ninety (90) days of such event, in his complete discretion, to terminate this Agreement by giving the Board sixty (60) days’ prior written notice of his decision to terminate.

29.1.3 Dissolution of Hospital Authority. If the Kern County Board of Supervisors should find and declare by adoption of a resolution that the hospital authority shall cease to exist and cause the hospital authority to dissolve, Executive may, in his sole discretion, terminate his employment by giving the Board ninety (90) days' prior written notice of his decision to terminate or be retained as chief executive officer of KMC or its successor. Any election to terminate employment under this subparagraph must be made prior to the dissolution of the hospital authority. If Executive continues to be employed as chief executive officer at KMC or its successor organization, all of the terms and conditions of this Agreement shall remain in effect. Authority agrees that neither it nor any successor in interest shall enter into any agreement that would negate or contradict the provisions of this Agreement.

29.2 Effect of Involuntary Termination.

29.2.1 Board Discretion. Upon such termination, all rights, duties and obligation of both parties shall cease except that Authority shall continue to pay Executive in accordance with paragraph 3.2 herein (the "Severance Period"). During the Severance Period, Executive shall not be required to perform any duties for Authority or KMC or come to KMC.

29.2.2 Change in Duties. If Executive elects to terminate employment due to a change in duties or authority, upon such termination, all rights, duties and obligation of both parties shall cease except that Authority shall continue to pay Executive in accordance with paragraph 3.2 herein. During the Severance Period, Executive shall not be required to perform any duties for Authority or KMC or come to KMC.

29.2.3 Dissolution of Hospital Authority. If Executive elects to terminate employment due to dissolution of the hospital authority, upon such termination, all rights, duties and obligation of both parties shall cease except that Authority shall continue to pay Executive in accordance with paragraph 3.2 herein. During the Severance Period, Executive shall not be required to perform any duties for Authority or KMC or come to KMC.

29.3 Voluntary Termination. Executive may in his discretion terminate this Agreement for any other reason than as stated in subparagraph 29.1 by giving the Board ninety (90) days' prior written notice of his decision to terminate. At the end of ninety (90) days, all rights, duties and obligations of both parties under this Agreement shall cease and Executive will not be entitled to any of the severance benefits described in paragraph 3.2 herein.

29.4 Termination for Cause. Notwithstanding the foregoing, Authority shall have the right to terminate this Agreement effective immediately after giving written notice to Executive for any of the following reasons: (i) the unwillingness of Executive to perform all, or substantially all, of the duties of chief executive officer, which failure persists for five (5) business days after written notice to Executive (excluding authorized absences); (ii) the filing for bankruptcy or other creditor protection by Executive; (iii) failure or neglect of Executive to properly and timely perform the duties of chief executive officer as set forth in this Agreement;

(iv) Executive engages in acts which confer improper personal benefit upon Executive; (v) Executive advises Authority or KMC in a manner that is contrary to the public interest or Executive engages in conduct that is not in the best interest of Authority or KMC; (vi) attempts on the part of Executive to secure personally any profit in connection with any transaction entered into on behalf of Authority or KMC; (vii) violation by Executive of any federal, state, or local laws or regulations to which Authority or KMC is subject; (viii) insubordination of Executive or disloyalty by Executive, including without limitation, aiding an Authority or KMC competitor; (ix) failure of Executive to cooperate fully in any Authority investigation; (x) an unauthorized use or disclosure of confidential or proprietary information by Executive which causes material harm to Authority or KMC; (xi) negligence or misconduct in the performance of a duty by Executive, including failure to follow the reasonable directions of the Board of Governors; (xii) commission of any unlawful or intentional act by Executive which would be detrimental to the reputation, character or standing of Authority or KMC; (xiii) conviction of Executive of a felony offense or crime, or plea of “guilty” or “no contest” to a felony offense; (xiv) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Executive against Authority or KMC; (xv) the issuance of a final order of any governmental agency or court that has competent jurisdiction over the parties, which order requires the termination of this Agreement; or (xvi) 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.

29.5 Effect of Termination for Cause. In the event of termination of this Agreement for cause, Executive will not be entitled to any of the severance benefits described in paragraph 3.2 herein and Authority will have no further obligation to pay for any services rendered or expenses incurred by Executive after the effective date of the termination. Executive shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

30. **Effect of Termination.**

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

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

30.3 No Interference. Following the expiration or earlier termination of this Agreement, Executive 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 person who may replace Executive.

[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.

EXECUTIVE

By   
\_\_\_\_\_  
Alton Scott Thygerson

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority



**EXHIBIT “A”**  
**JOB DESCRIPTION**  
**Alton Scott Thygerson**

1. Executive shall be accountable to the Board of Governors. The general duties and expectations of Executive and the position are as follows:

- Plan, direct and manage the current operations, future growth and program development of Authority while ensuring responsible use of fiscal, human and physical resources
- Provide leadership in the day-to-day operations and administration of Authority, as well as planning and developing policies and programs for the administration and management of Authority
- Represent the interests of Authority in the development of public hospital funding for indigent care. Maintain communications with appropriate governmental agencies and hospital industry groups. Keep the Board of Governors apprised of administrative and political landscape regarding public hospital financing. Help develop political strategies that can be supported by the Board of Governors and hospital administration
- Maintain a cooperative and productive relationship with the KMC Medical Staff
- Provide leadership to the Chief Financial Officer in development of financial reporting and controls necessary to meet new public hospital funding policies
- Maintain billing, accounting and internal control systems to ensure efficient management of Authority funds
- Maintain active involvement in and oversight of the administration of all departments at KMC, including personnel management and internal controls for each of the clinical departments
- Continue to supervise medical quality control to minimize risk and maximize patient outcomes
- Facilitate communication between the Board of Governors, KMC administration, KMC Medical Staff and all other stakeholders
- Develop goals and objectives for Authority, in conjunction with the Board of Governors
- Perform those duties set forth in the Bylaws for Governance and in policy statements of the Board of Governors
- Ensure KMC delivers high quality, cost effective care and coordinate the development of services and facilities to fulfill Authority’s mission
- Undertake the following based on (i) the financial stability of Authority, (ii) market conditions, or (iii) the request of the Board of Governors:
  - Determine what services are being provided by Authority that are not required to meet legal obligations
  - Prepare a pro forma financial analysis for each department, including profitability by sources of revenue, function and patient source
  - Perform an analysis of functional areas taking into consideration all competitive factors in the market, market growth projections, and sources of reimbursement
  - Conduct strategic planning sessions within each department, allowing management and staff the opportunity for input
  - Perform population-based analysis of health care needs and compare availability of services to those needs

- Identify opportunities for Authority to fulfill the unmet needs both for new services and to increase access to care; this includes the expected reimbursement and profitability of the recommended opportunities
  - Evaluate Authority's existing capability and capacity, and project or approximate resource requirements necessary to expand scope of services
  - Evaluate impact of expanded services on reimbursement from Medi-Cal and other payers
  - Review Authority's sources of funding and identify strategies for coping with the changing market place
2. The Board and Executive shall develop mutually agreed upon succession plan within six (6) months of the Commencement Date, which shall be incorporated herein by an amendment to this Agreement.

[INTENTIONALLY LEFT BLANK]

**EXHIBIT “B”  
COMPENSATION SCHEDULE  
Alton Scott Thygerson**

<b>Step Levels<sup>1</sup></b>	<b>Annual Salary</b>	<b>Effective Date</b>
Step A	\$607,592	July 19, 2023
Step B	\$619,744	July 19, 2024
Step C	\$632,139	July 19, 2025
Step D	\$644,781	July 19, 2026
Step E	\$657,677	July 19, 2027

[INTENTIONALLY LEFT BLANK]

---

<sup>1</sup> The position of chief executive officer has five (5) step levels, which shall be designated as Step A, Step B, Step C, Step D and Step E. There is a maximum adjustment of two percent (2%) per level. Step A shall consist of the minimum rate of annual base compensation for this position.



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

July 19, 2023

**Subject:** Kern County Hospital Authority Chief Financial Officer Report – May 2023

**Recommended Action:** Receive and File

**Summary:**

**Kern Medical Operations:**

Kern Medical key performance indicators:

- Operating gain of \$99,251 for May is \$4,979 more than the May budget of \$94,272 and \$66,139 less than the \$165,390 average over the last three months
- EBIDA of \$1,663,198 for May is \$498,960 more than the May budget of \$1,164,238 and \$158,448 less than the \$1,821,646 average over the last three months
- Average Daily Census of 161 for May is 20 more than the May budget of 141 and 9 more than the 152 average over the last three months
- Admissions of 794 for May are 178 less than the May budget of 972 and 83 more than the 711 average over the last three months
- Total Surgeries of 519 for May are 60 more than the May budget of 459 and 47 more than the 472 average over the last three months
- Clinic Visits of 18,059 for May are 3,417 more than the May budget of 14,642 and 679 more than the 17,380 average over the last three months. The total includes 33 COVID-19 vaccination visits

The following items have budget variances for the month of May 2023:

**Patient Revenue:**

For gross patient revenue there is a 5% favorable budget variance for the month due to strong patient census levels. On a year-to-date basis, gross patient revenue is about 2% under budget and about 1% less than the prior year-to-date amount. Kern Medical expects gross patient revenue to meet or exceed the budgeted year-to-date dollar amount by fiscal year-end.

**Indigent Funding Revenue:**

Indigent funding has a favorable budget variance for the month due to the recognition additional Quality Improvement Program (QIP) funding. A favorable change in estimate for this program is based on achieving 100% of the quality goals per the current performance report for this program. In addition to the additional QIP funding, on a year-to-date basis the favorable budget variance is due to the recognition of additional Medi-Cal Graduate Medical Education (GME) funding. This program started in FY 2017 and has been paid at pre-Affordable Care Act (ACA) rates. Therefore, the payments that hospitals have been receiving for the GME program have not been calculated using the current Federal Medical Assistance Percentage (FMAP) rate which is more favorable. The Centers for Medicare and Medicaid Services (CMS) recently approved the proposed methodology to apply the current FMAP rate to the GME program retroactively back to FY 2017 through FY 2022 and pay hospitals for the difference.

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

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

**Other Operating Revenue:**

Other operating revenue has an unfavorable budget variance for May due to the reclassification of a \$1.7 million COVID-19 worker retention payment from the Department of Healthcare Services from this line item to other non-operating revenue. The payment was received and recognized in April 2023 as other operating revenue. However, all COVID-19 related funding should be classified as other non-operating revenue. Therefore, for the month of May there is a corresponding favorable budget variance for the other non-operating revenue line item. On a year-to-date basis, revenue for items such as medical education funding, grants, and Proposition 56 are received quarterly or otherwise periodically. Therefore, actual monthly revenue compared to the budget will fluctuate throughout the year, but should agree with the planned budgeted dollar amount on a year-to-date basis at year-end.

**Other Non-Operating Revenue:**

Please see the note above about the other operating revenue variance and the explanation about how it affects the other non-operating revenue variance. Other non-operating revenue has a favorable budget variance for the month due to the reclassification of a \$1.7 million COVID-16 worker retention payment from the Department of Healthcare Services from other operating revenue to this line item. All COVID-19 related funding should be classified as other non-operating revenue as discussed in the explanation above for other operating revenue. On a year-to-date basis federal and state COVID-19 related funding is budgeted evenly throughout FY 2023 as other non-operating revenue; however, COVID-19 funding is not received consistently. Therefore, the actual dollar amount recorded for this line item fluctuates vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

**Nurse Registry Expense:**

Nurse registry expense is under budget for the month and on a year-to-date basis. Kern Medical has substantially decreased its usage of contract nurse services. In addition, the hourly rates charged by the staffing agencies that provide registry nurse services are significantly lower than at various COVID-related peaks. During the past two years, staffing agencies were charging higher than average costs per hour due to nurse shortages during the pandemic. Kern Medical plans to continue its need for registry services as appropriate to staff for patient needs.

**Medical Fees:**

Medical fees are over budget for the month and on a year-to-date basis because of an increase in coverage for trauma services provided by the Acute Care Medical Surgery Group. The monthly fees for Regional Anesthesia Associates have also increased. In addition, the budget for this line item was reduced for FY 2023 with the expectation of less usage of contract physician services.

**Other Professional Fees:**

Other professional fees are over budget for the month and on a year-to-date basis because of monthly per-member-per-month (PMPM) payments for Universal Healthcare's Enhanced Care Management (ECM) services. These fees are offset by additional gross patient revenue for ECM services billed by Kern Medical. In addition, other professional fees were incurred for Microsoft affiliate Finchloom. The IT department engaged Finchloom to conduct a cyber-security assessment. The consulting company Healthfuse has also been engaged to provide revenue cycle consulting services. Also, contract labor expense for the Information Systems department is higher than average for the month and on a year-to-date basis.

**Supplies Expense:**

Supplies expense is under budget for the month and on a year-to-date basis because of lower-than-average costs for pharmaceuticals and for general medical supplies.

**Purchased Services:**

Purchased services are over budget for the month primarily because of higher than average out-of-network costs for health care services provided by outside providers for Kern Medical patients. On a year-to-date basis, purchased services are over budget mainly because of additional revenue cycle support services provided by Signature Performance and by Health Advocates. Health Advocates helps to qualify patients for Medi-Cal coverage. However, Health Advocates' expenses are offset by additional Medi-Cal patient revenue. In addition, computer software maintenance fees have increased compared to prior year. There was also an increase in cost for security.

**Other Expenses:**

Other expenses are under budget for the month due to a change in the treatment of accounting for leases. GASB 87 was implemented in 2022 and requires leases to be set up as assets at fair market value and amortized over time. Corresponding right-of-use liabilities are also set up for leases with applicable interest expense accrued. The net effect of the implementation of GASB 87 is minimal. The decrease in lease expense under the other expenses section of the income statement is offset by increases in amortization expense and in interest expense. On a year-to-date basis, the unfavorable budget variance is primarily because of clinic lease expense, higher-than-average costs for repairs and maintenance, and for utilities.

**Interest Expense:**

Interest expense is over budget for the month because of the implementation GASB 87. Please see the other expenses section of this memo for an explanation of how leases are accounted for under GASB 87 and how it may affect interest expense. On a year-to-date basis, in addition to GASB 87 interest expense is over budget due to higher than anticipated certificate of participation (COP) bond interest.

**Depreciation and Amortization Expense:**

Depreciation and amortization expenses are over budget for the month and on a year-to-date basis because of the implementation of GASB 87. Please see the other expenses section of this memo for an explanation of how leases are accounted for under GASB 87 and how it may affect amortization expense.

**Balance Sheet: Long-Term Liabilities**

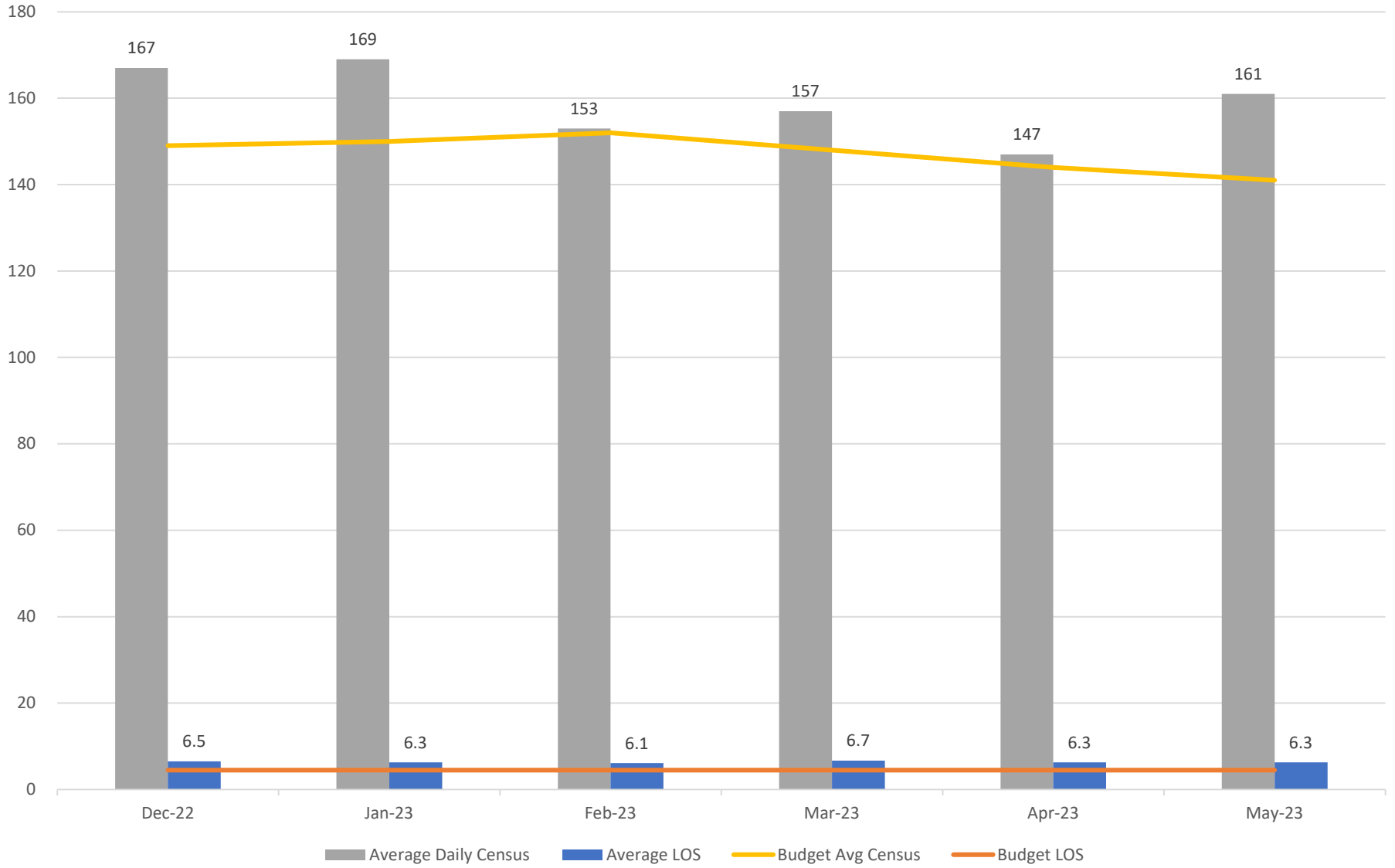
Kern Medical's FY 2022 financial audit was completed in February 2023 and the FY 2022 reporting period was closed. The resulting adjustments for long-term liabilities made after fiscal year-ended June 30, 2022 are now reflected in the monthly balance sheet reporting for FY 2023. Among the entries is a \$96.9 million favorable accounting adjustment for the unfunded pension obligation. The adjustment is supported by the year-end actuarial report received from KCERA that was based on market conditions at the time the report was compiled. This adjustment also has a favorable effect on retained earnings and the total fund balance. This accounting adjustment does not alter financial profitability or cash position.

In addition to the favorable change for the unfunded pension liability, other-long term liabilities reported for May 2023 total \$130,256,249, up from the prior year amount of \$64,286,919. The unfavorable change is due in large part to a \$49.1 million unfavorable increase in deferred inflows from the pension. This adjustment for deferred inflows is also supported by the KCERA actuarial report previously referenced. In addition, a separate actuarial report from Segal supports a \$5.6 million unfavorable adjustment for the other post-employment benefits (OPEB) liability. A \$5.2 million long-term liability was also added as part of the implementation of the new GASB 87 accounting treatment for leases. Please see the other expenses section of this memo for details about the implementation of GASB 87.



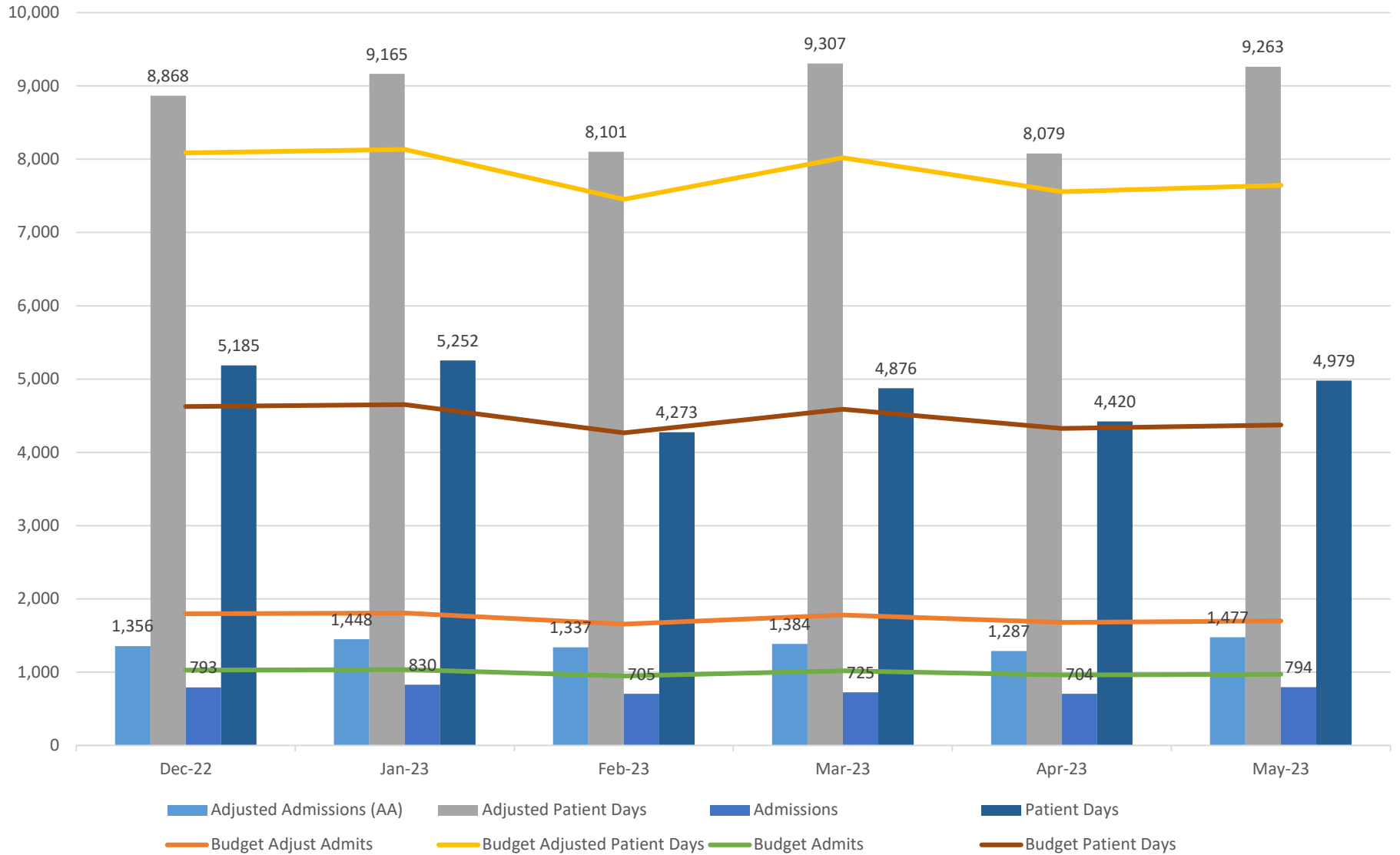
**BOARD OF GOVERNORS' REPORT  
KERN MEDICAL – MAY 2023**

# Census & ALOS

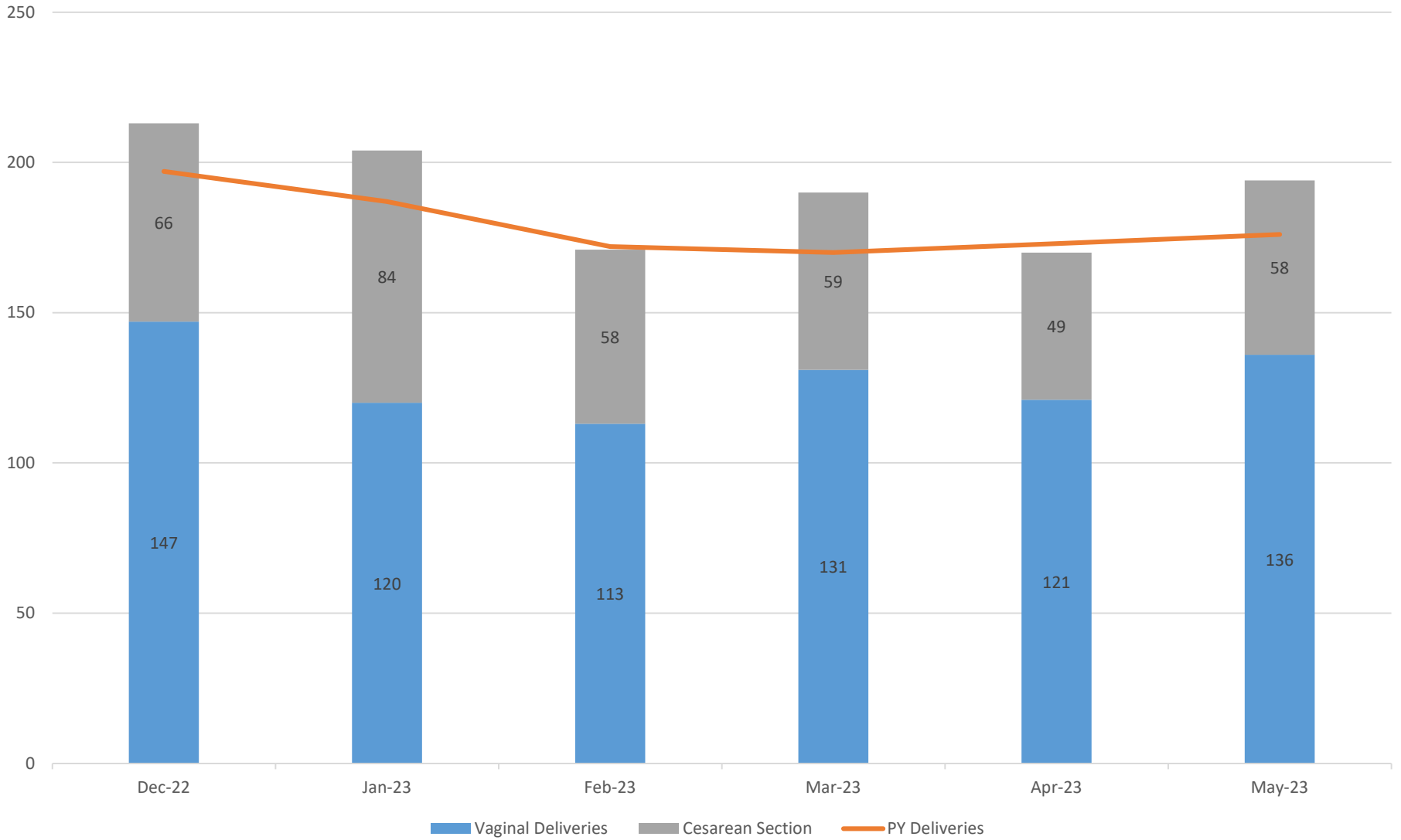




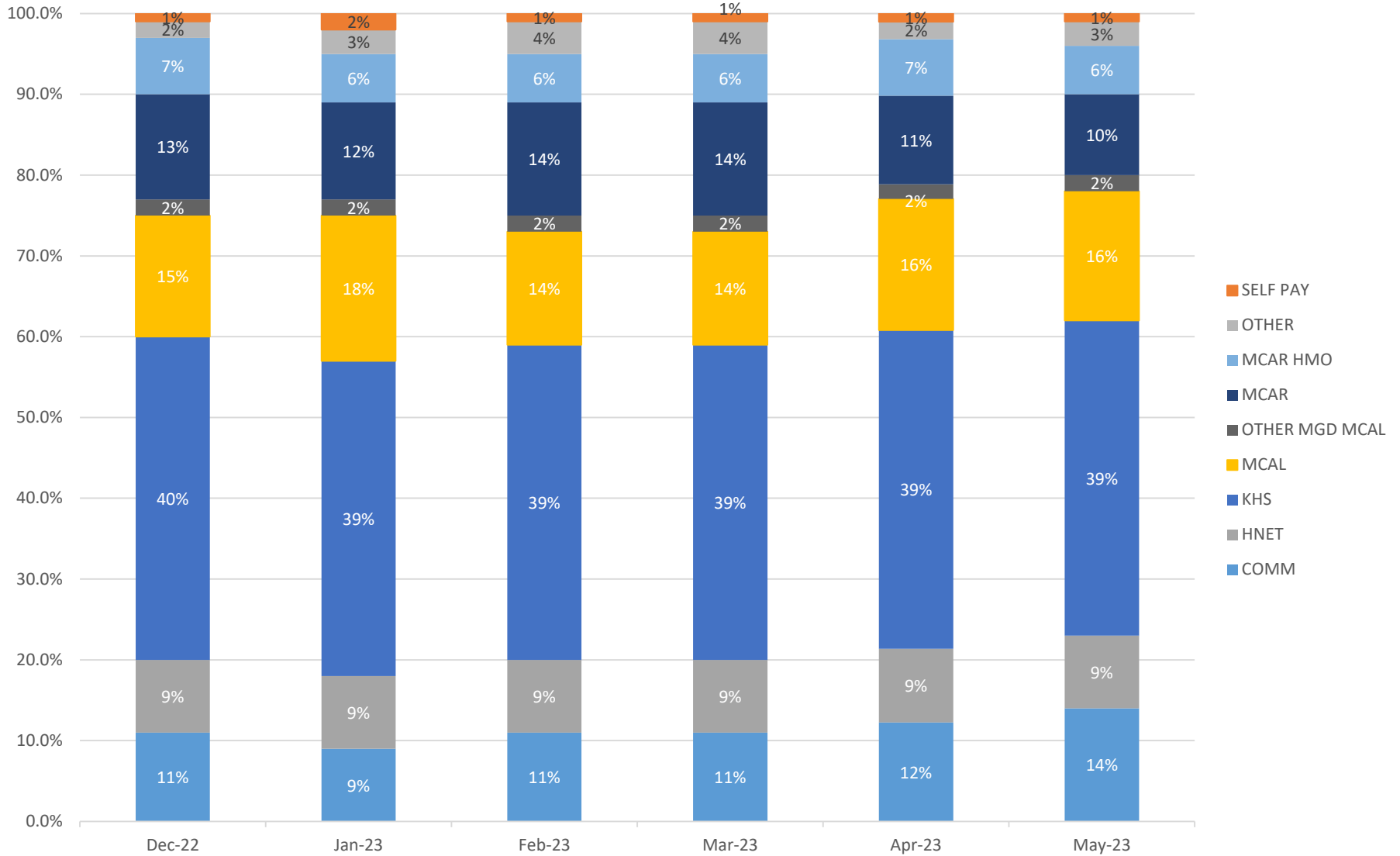
# Hospital Volumes



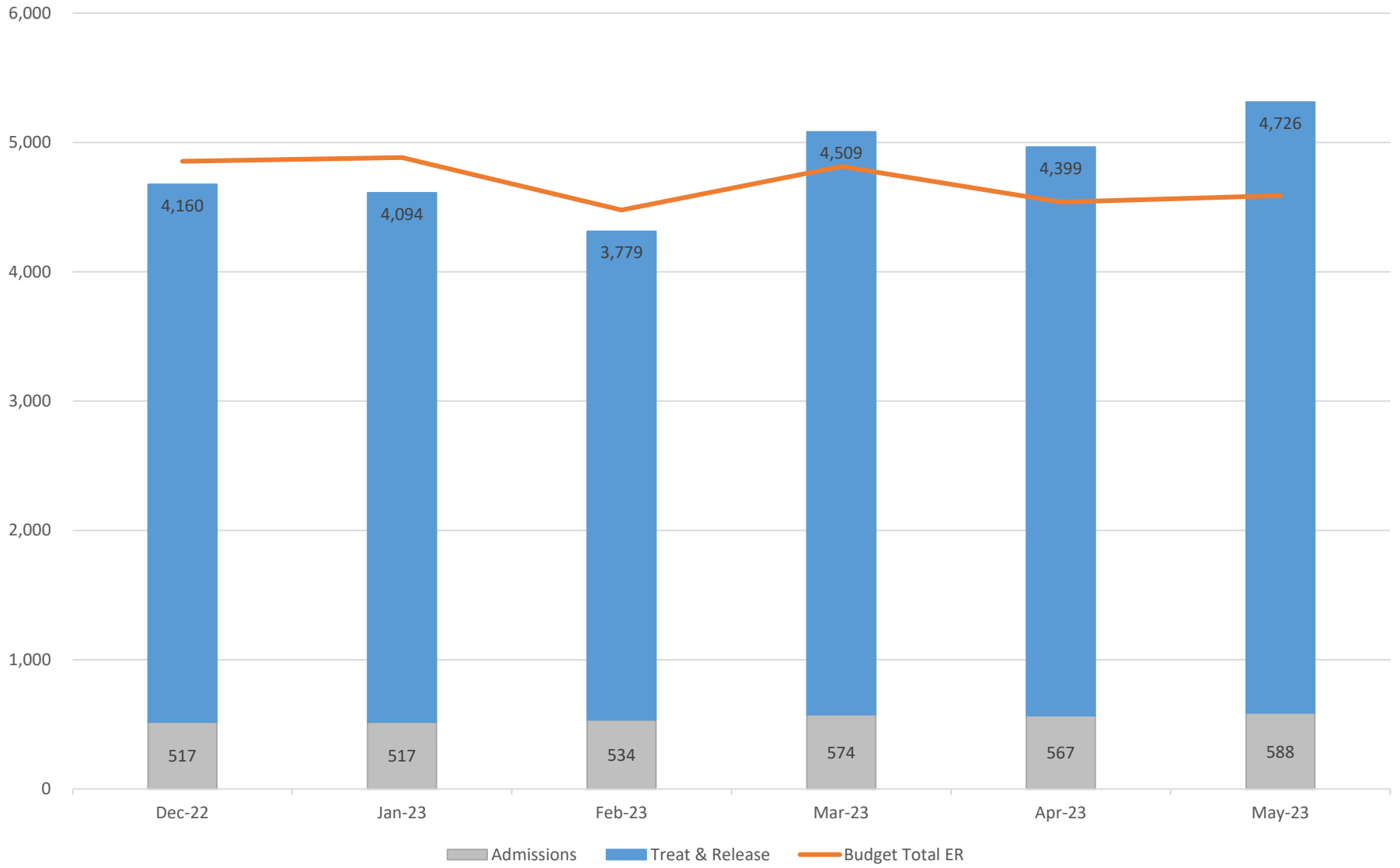
# Deliveries



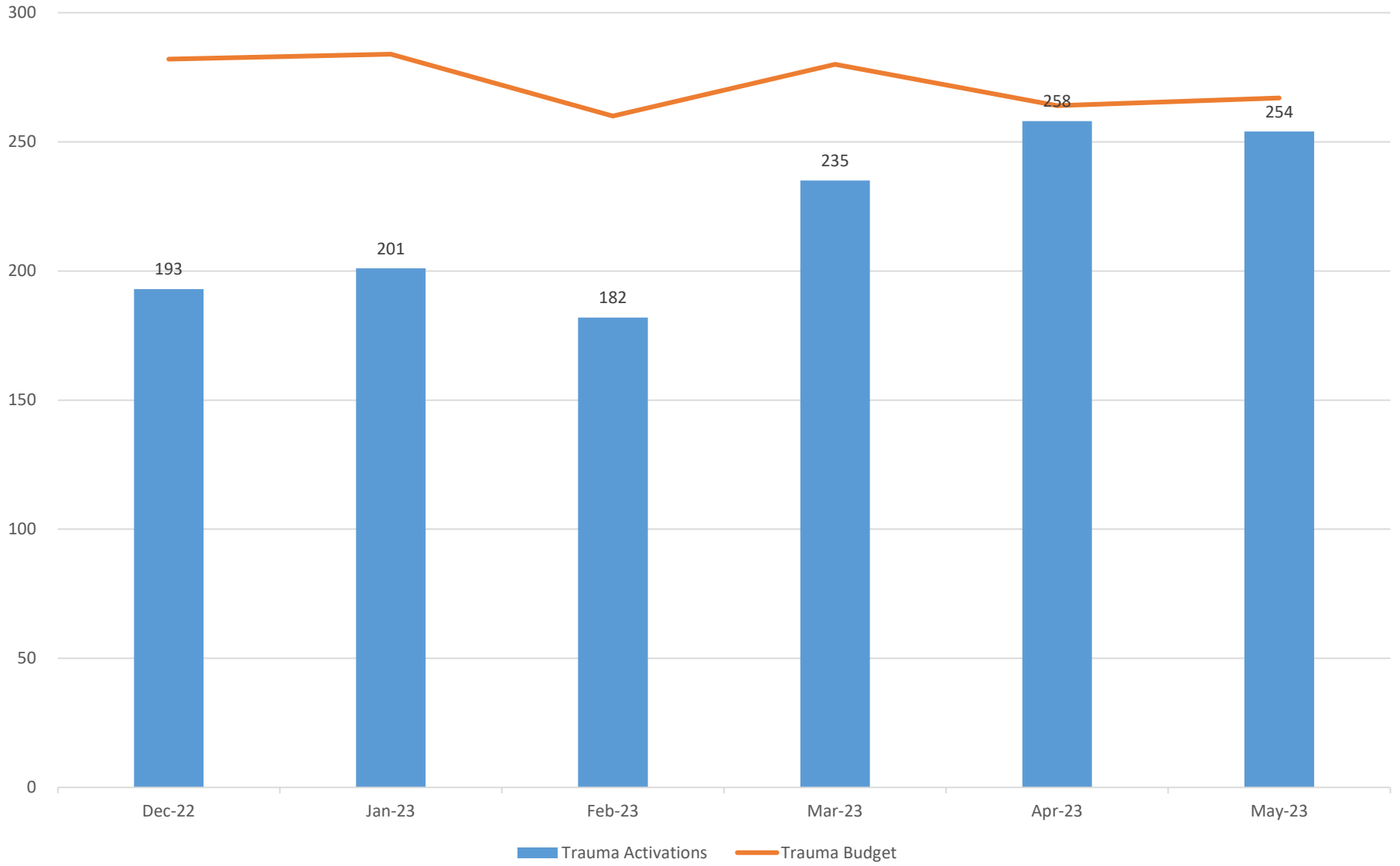
## PAYER MIX



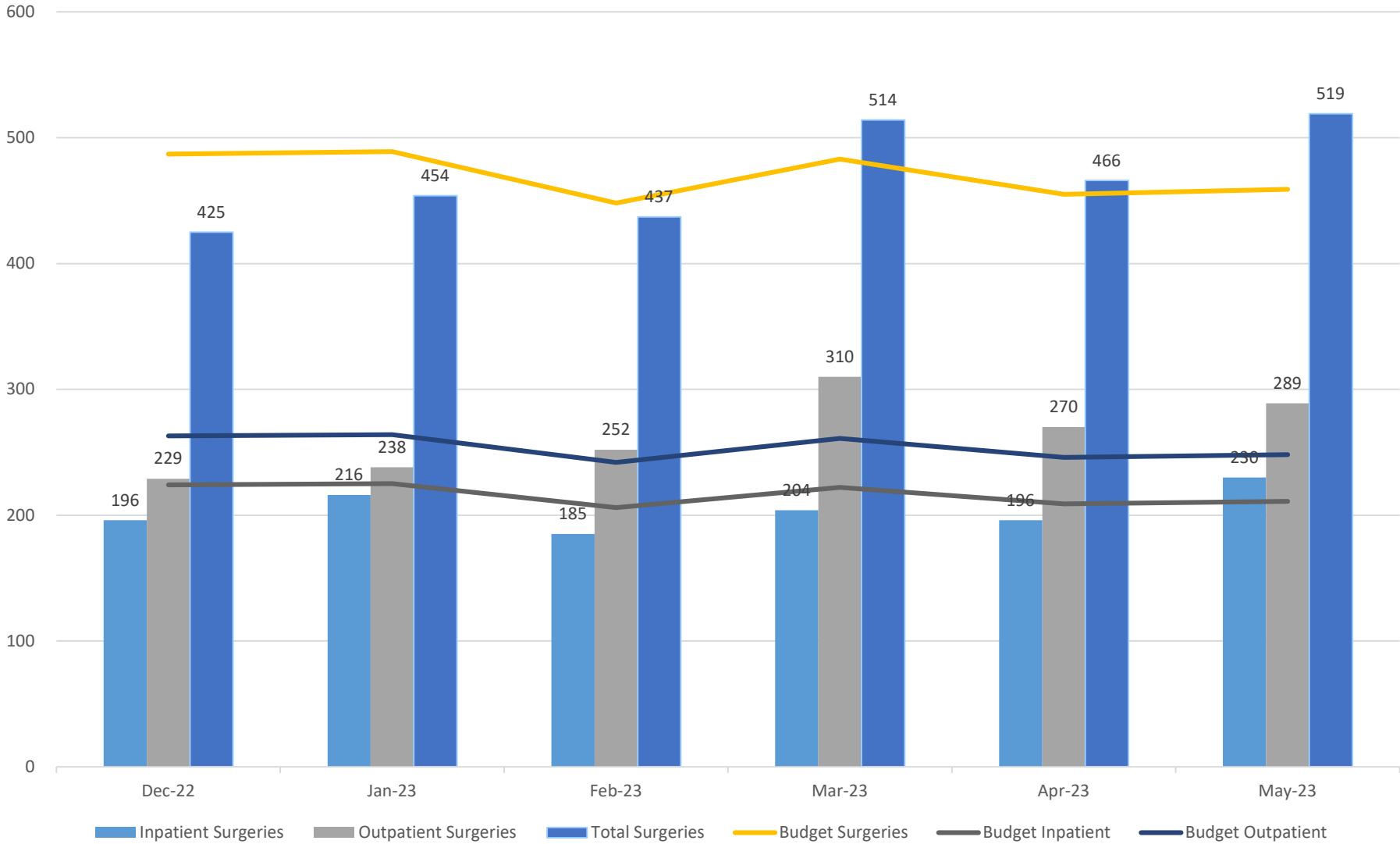
# Emergency Room Volume



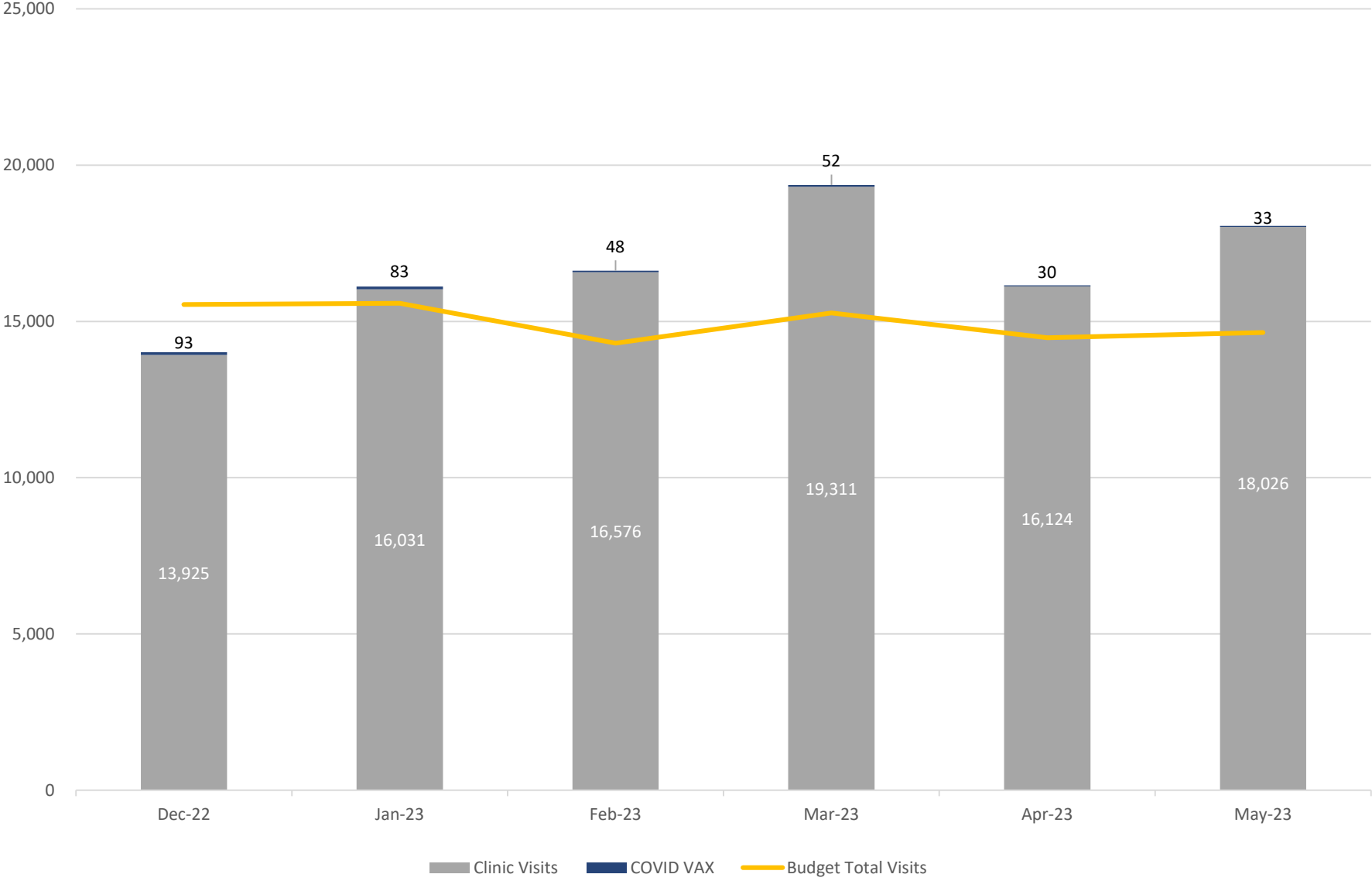
# Trauma Activations



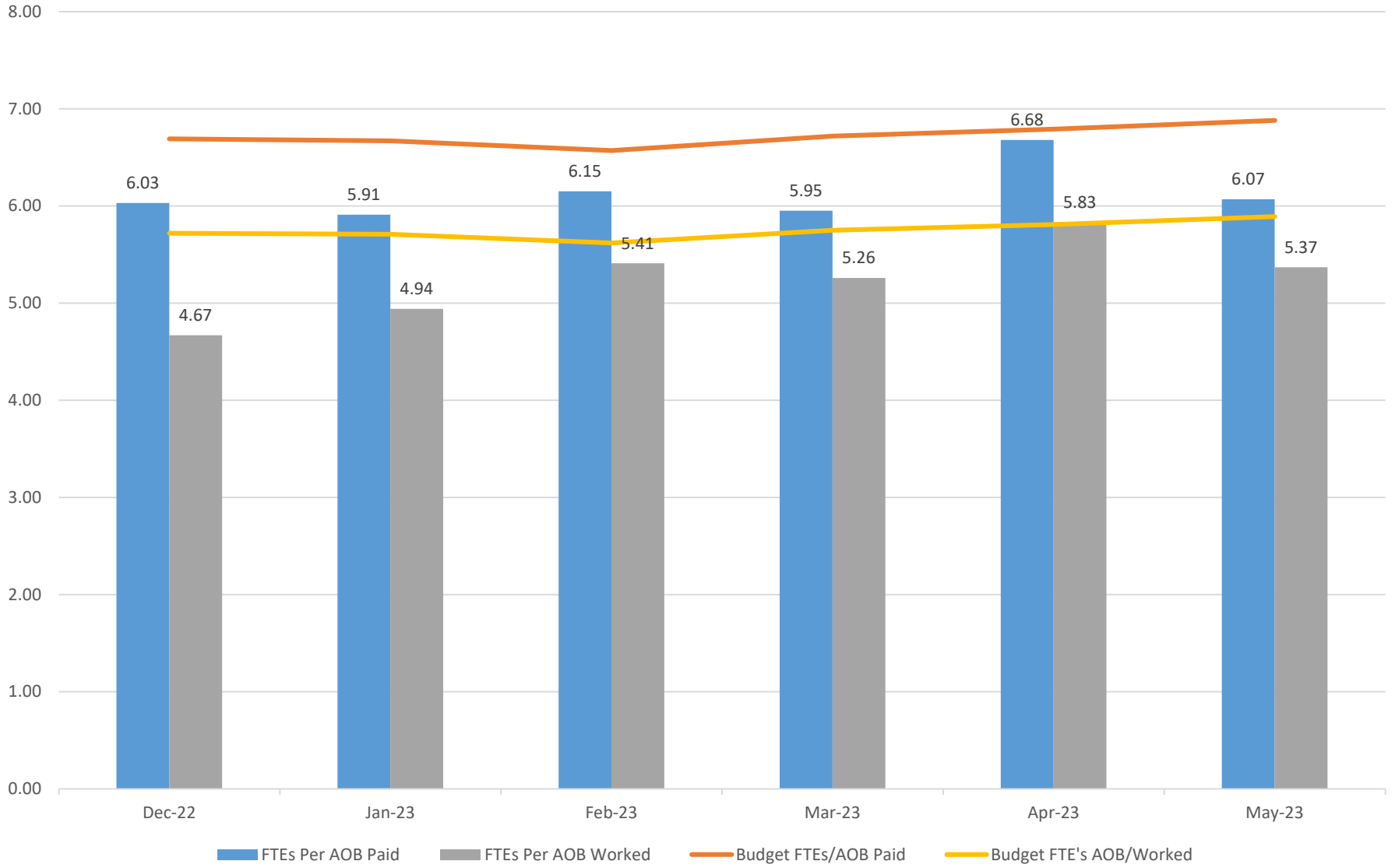
# Surgical Volume



# Clinic Visits

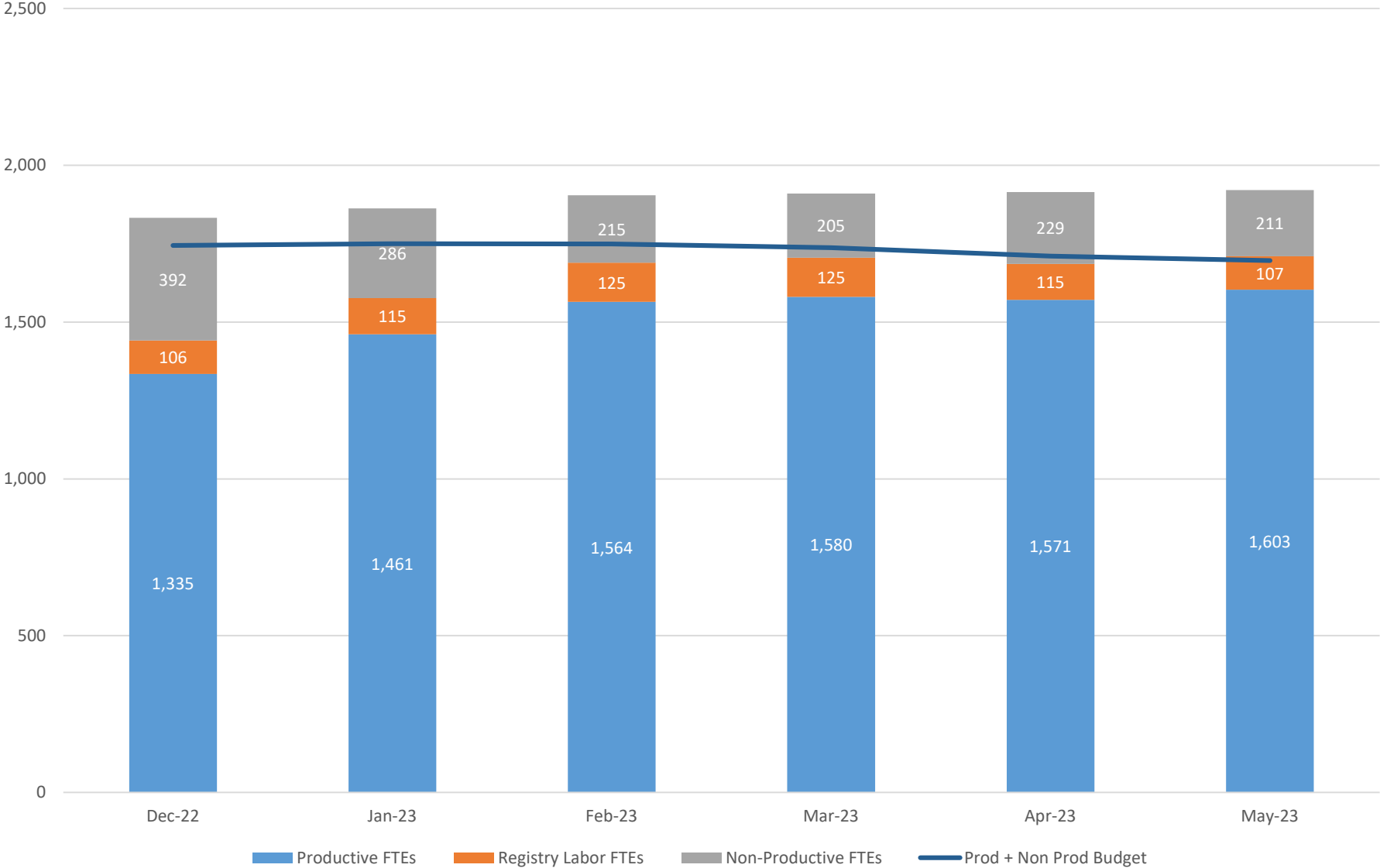


# Labor Metrics

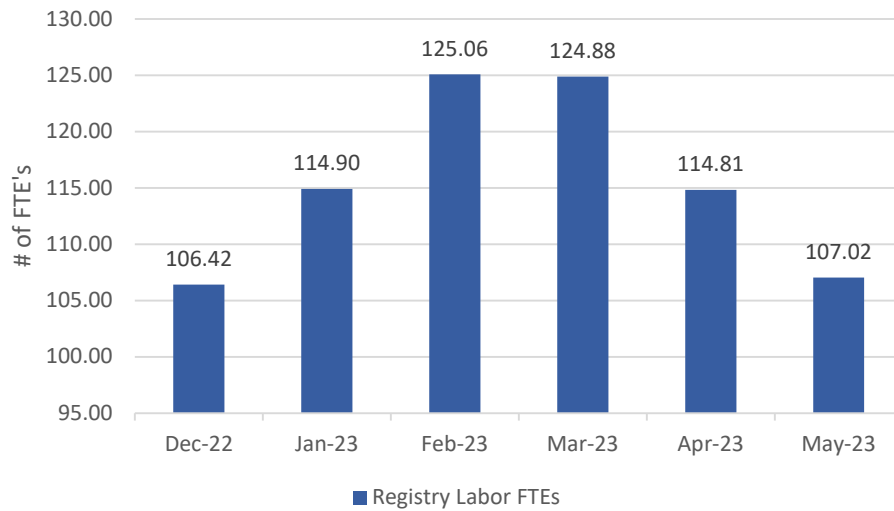




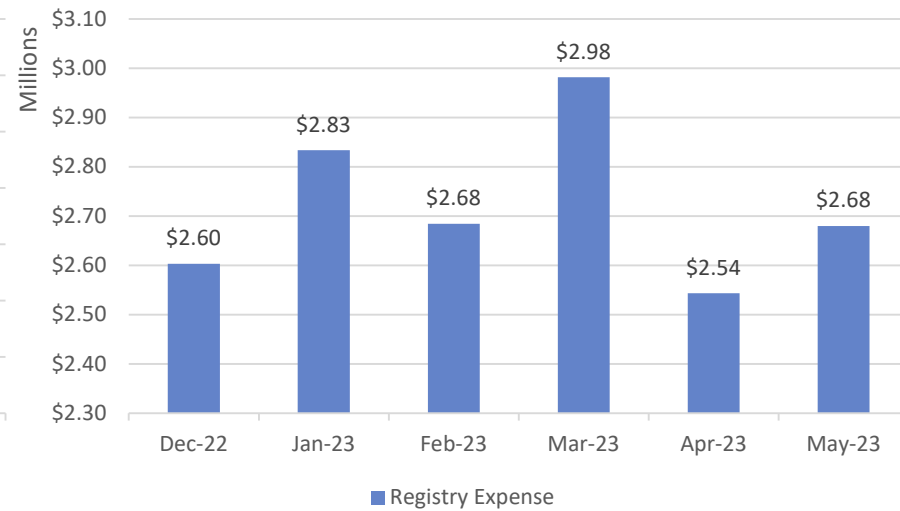
# Productivity



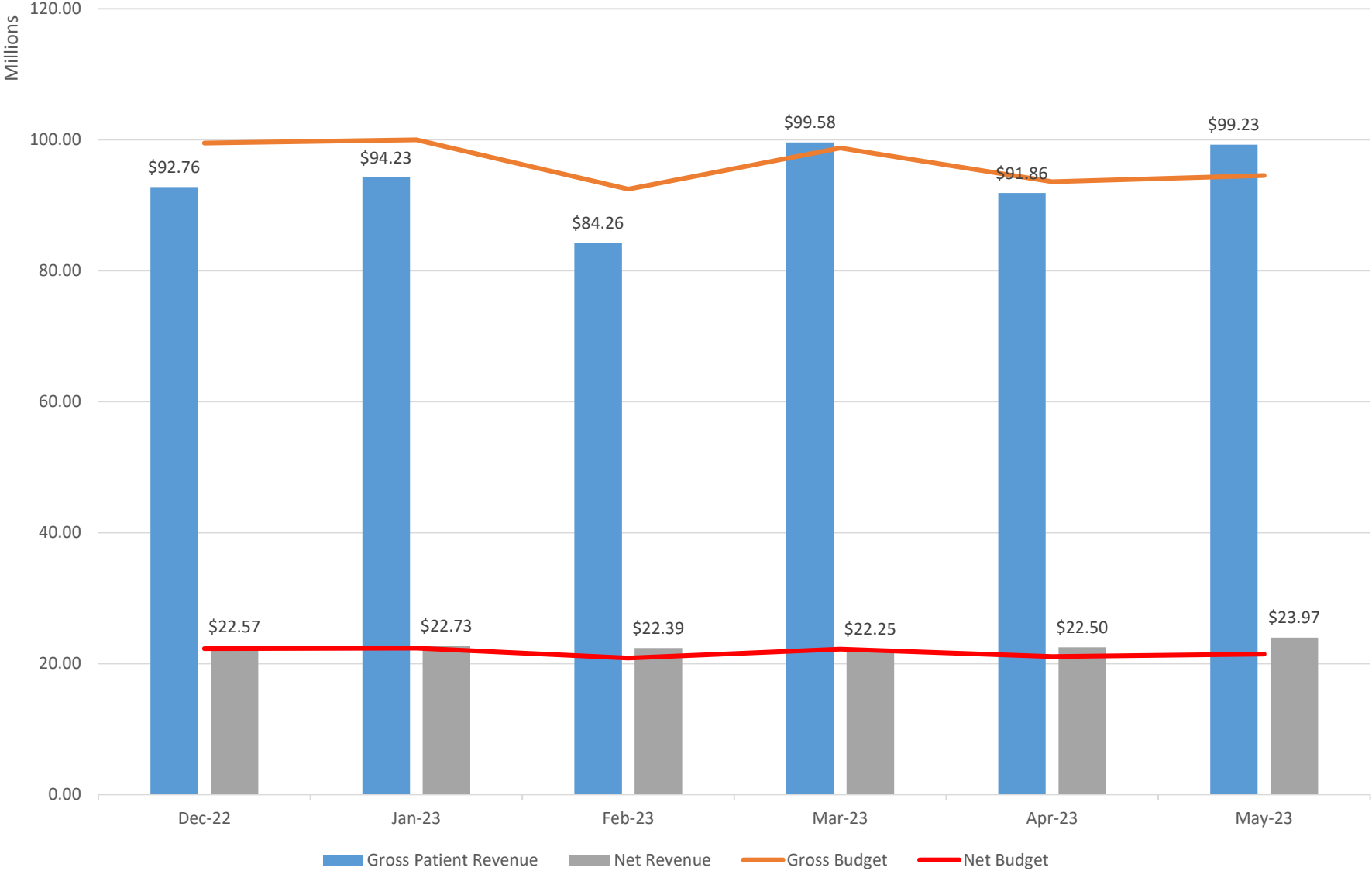
### Registry FTE's



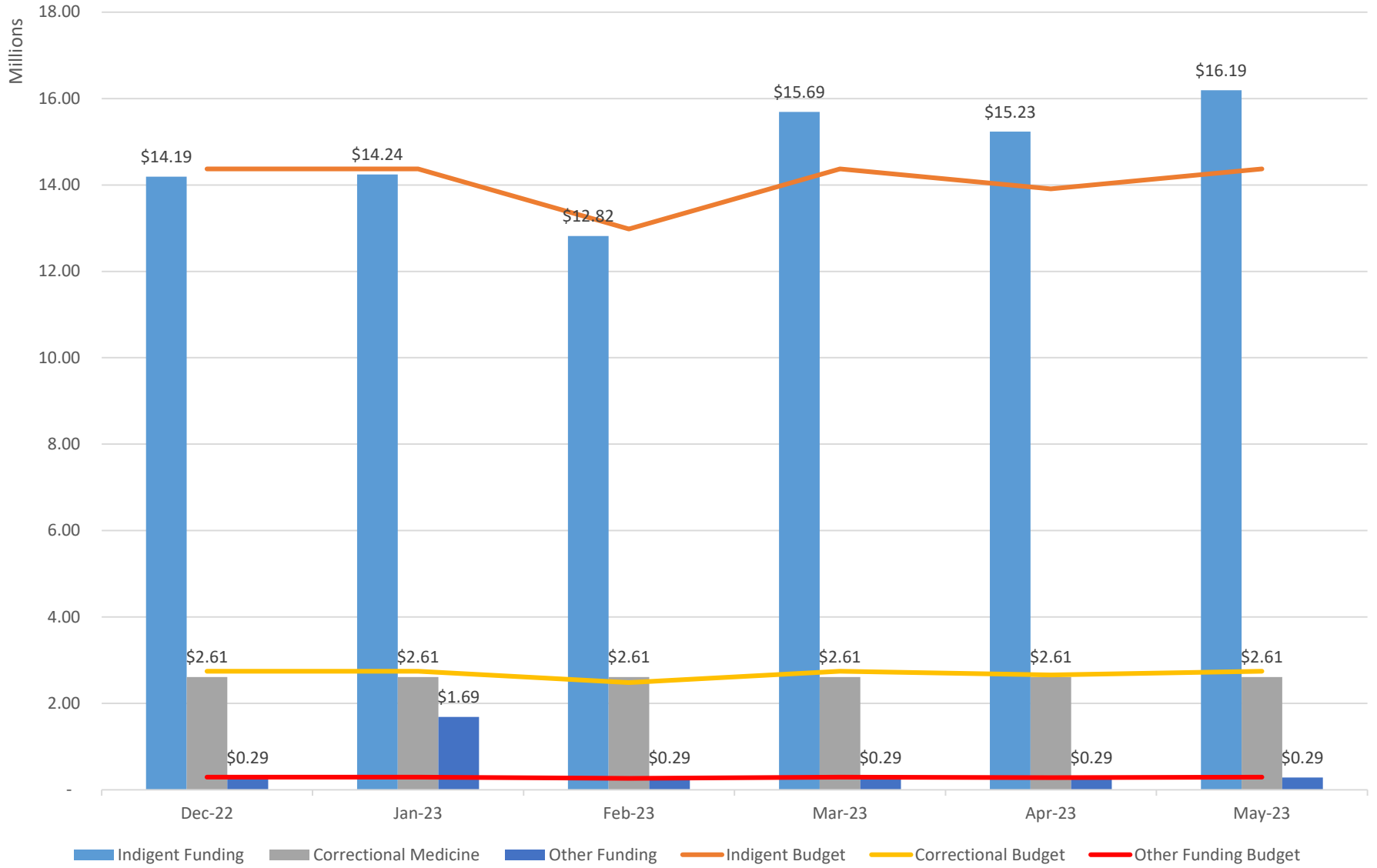
### Registry Expense



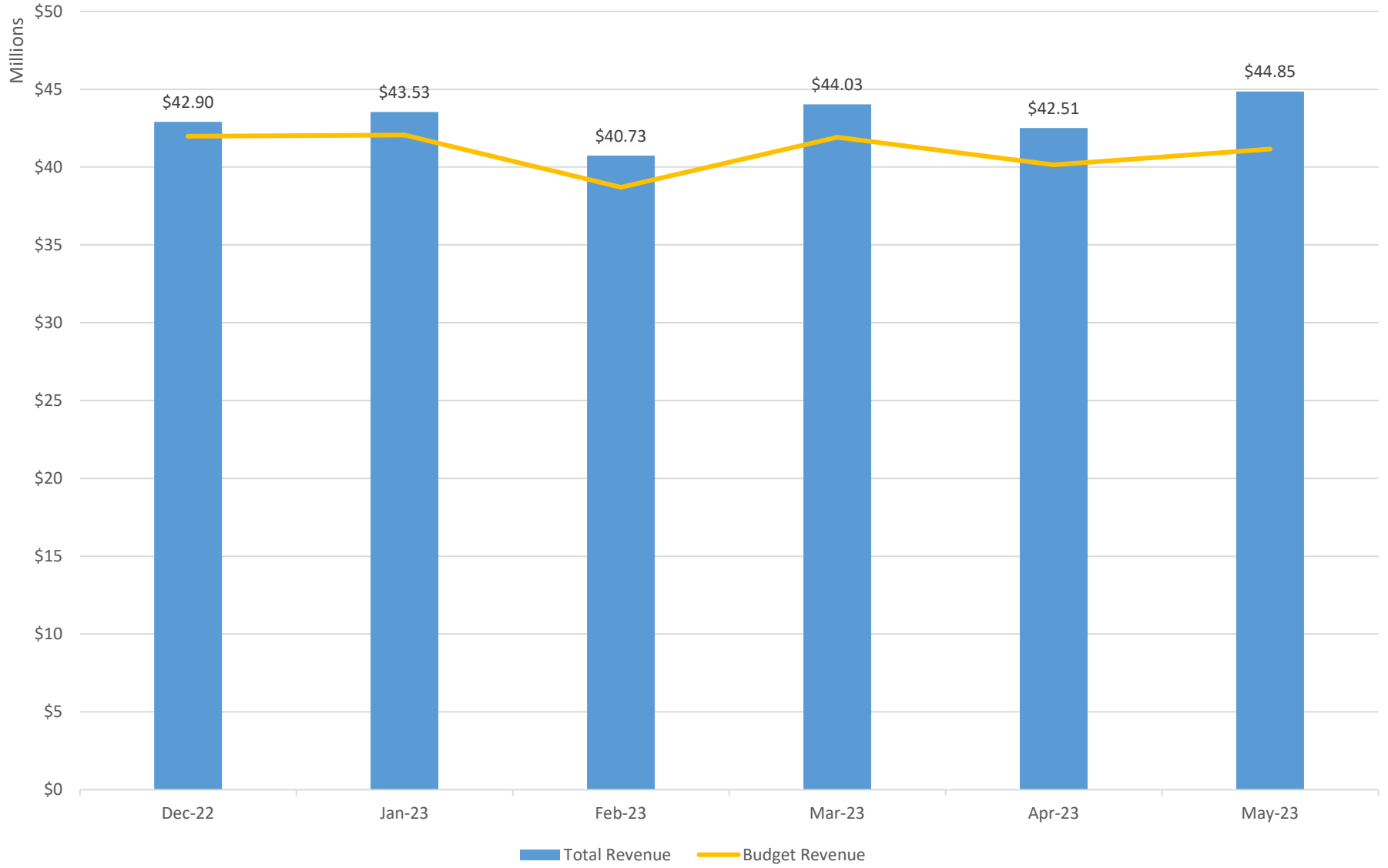
# Patient Revenue



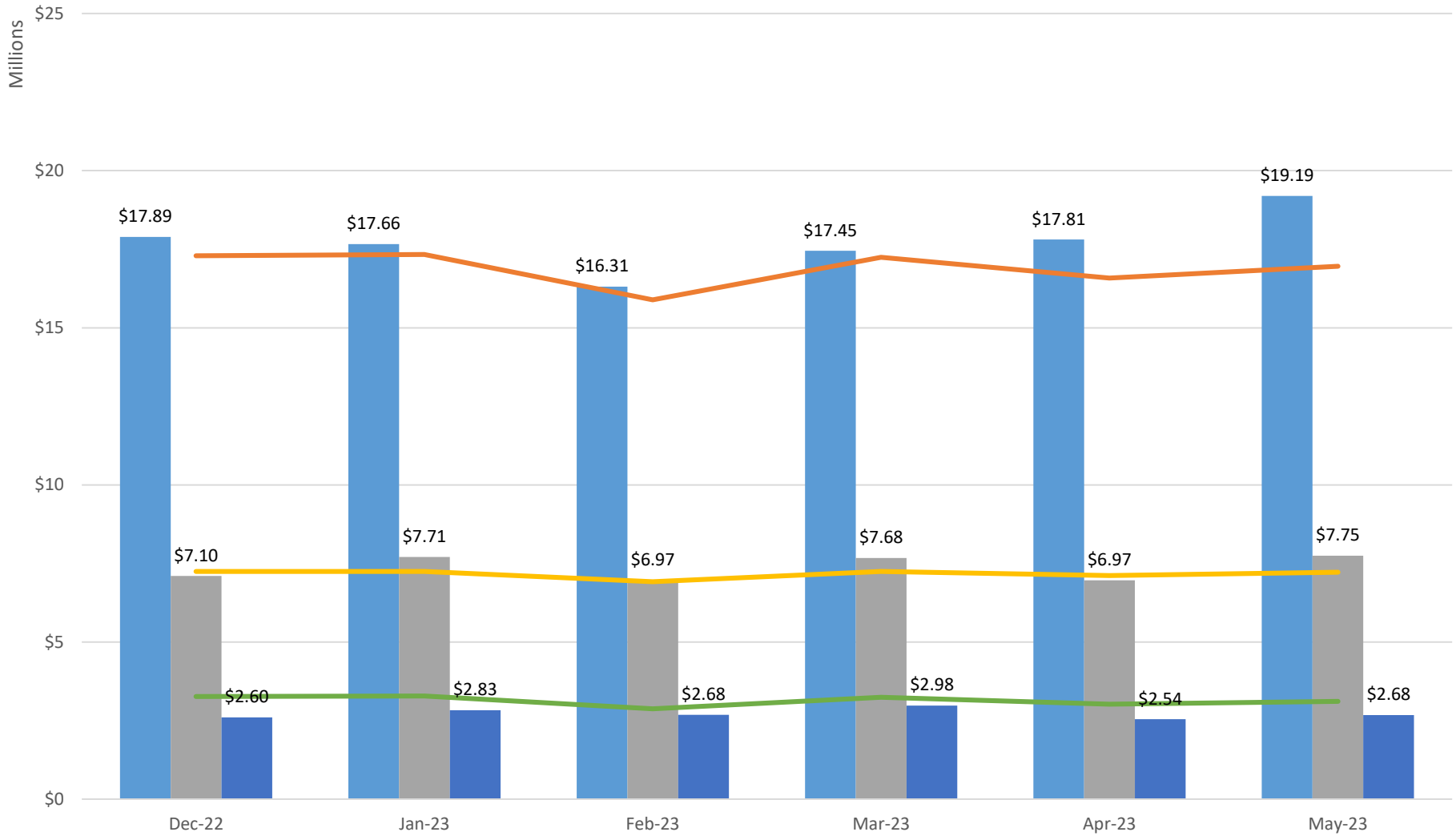
## Indigent & Correctional Revenue



## Total Revenue

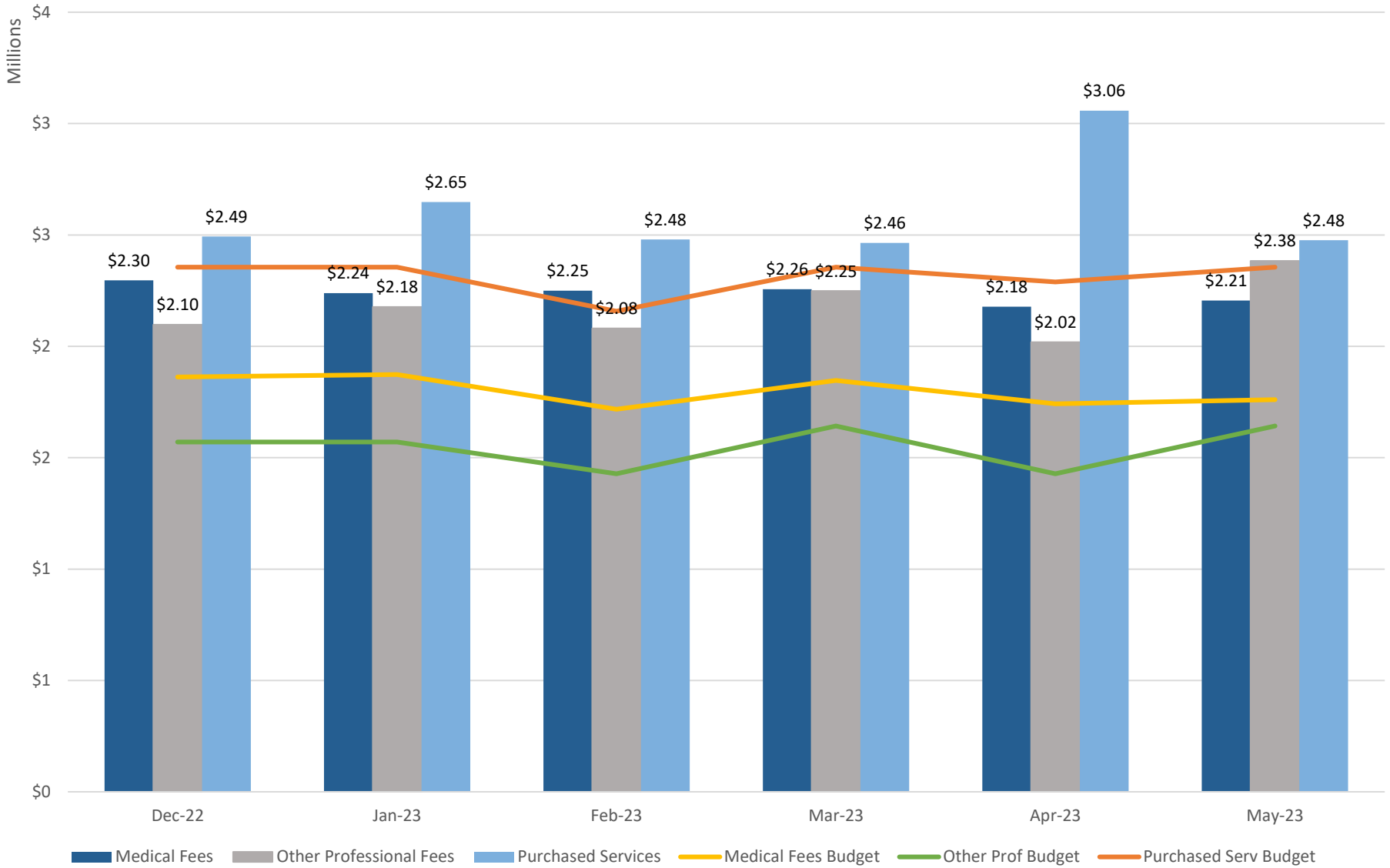


# Expenses

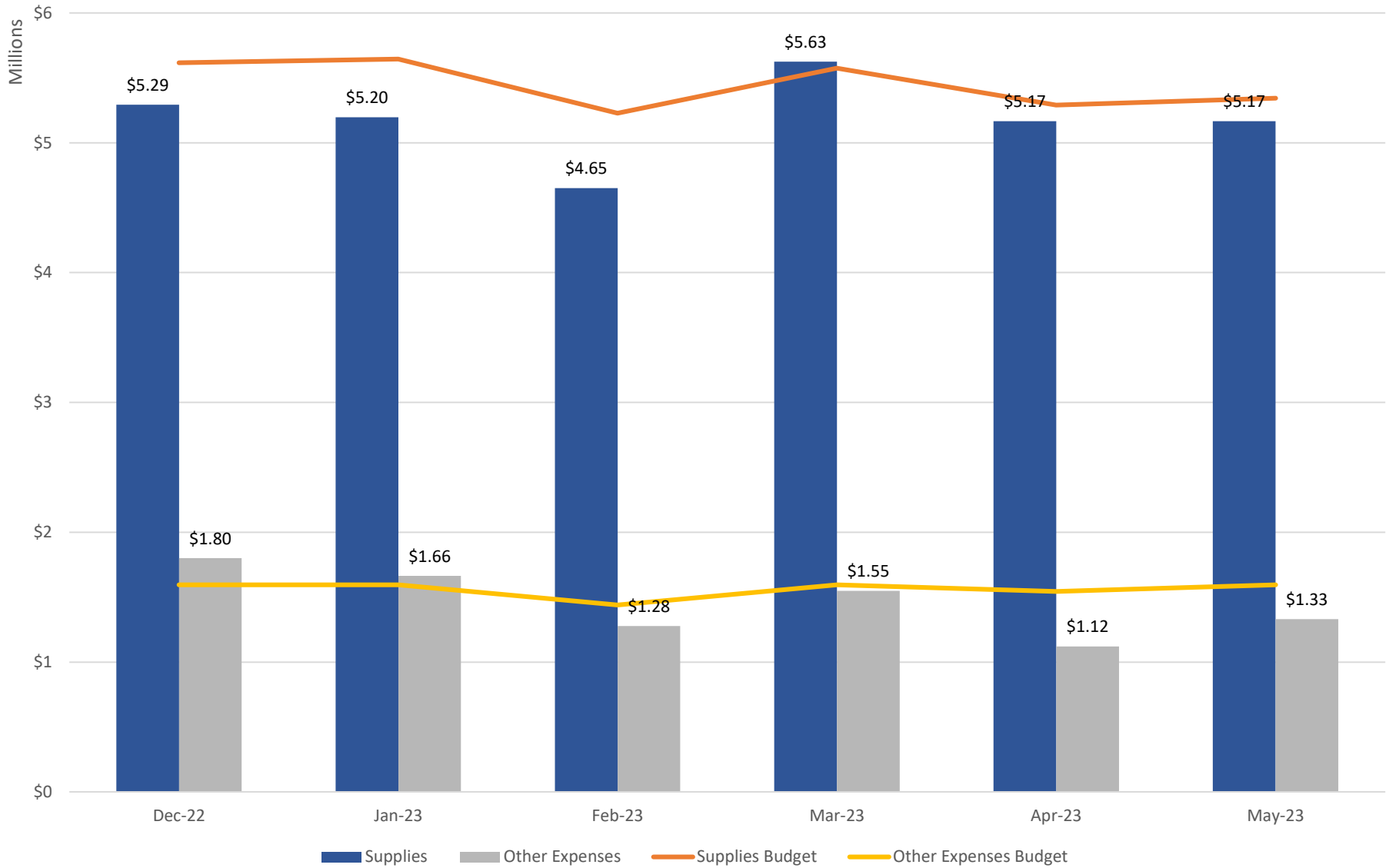


■ Salaries   
 ■ Employee Benefits   
 ■ Registry   
 — Salaries Budget   
 — Benefits Budget   
 — Registry Budget

# Expenses

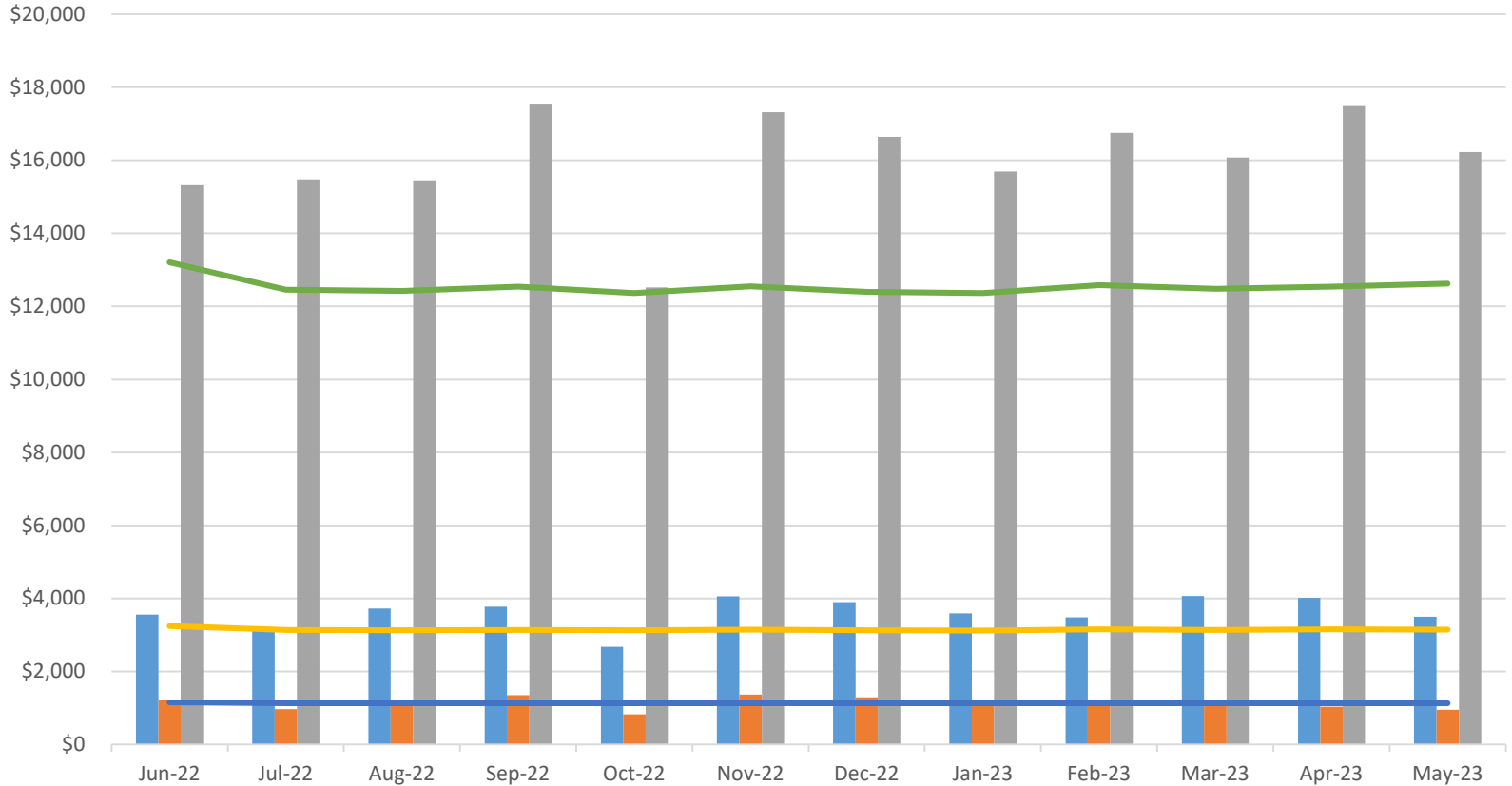


# Expenses



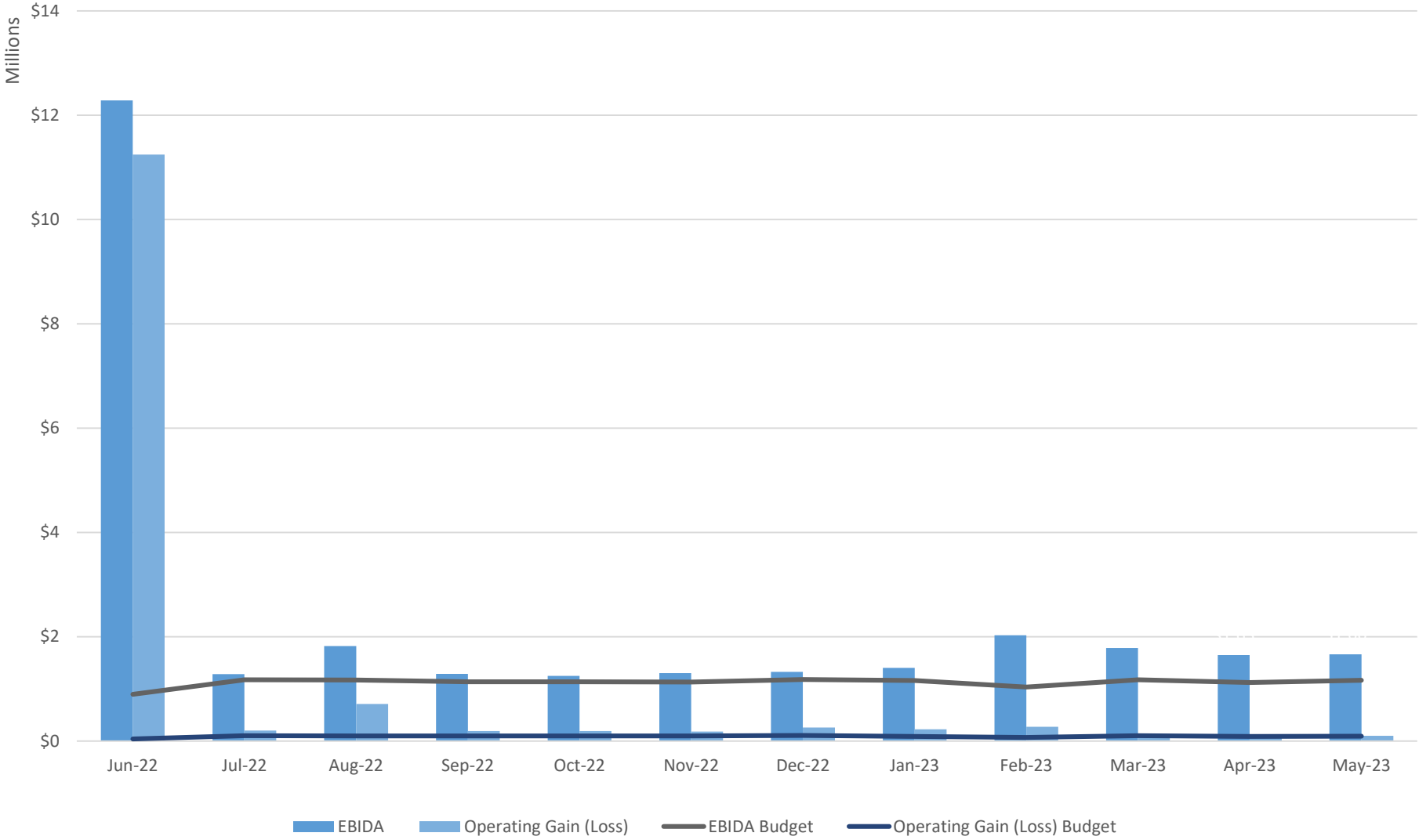


## Operating Metrics

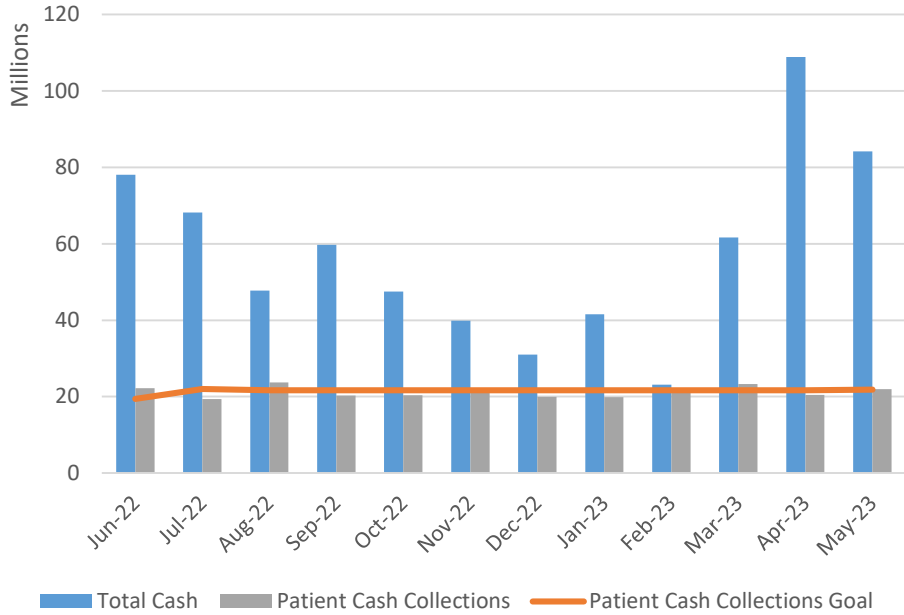


	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23
Supply Expense per AA	\$3,555	\$3,195	\$3,728	\$3,773	\$2,670	\$4,056	\$3,902	\$3,588	\$3,480	\$4,065	\$4,016	\$3,497
Pharm Cost per AA	\$1,218	\$966	\$1,101	\$1,349	\$826	\$1,368	\$1,293	\$1,153	\$1,094	\$1,199	\$1,037	\$948
Net Revenue Per AA	\$15,318	\$15,476	\$15,451	\$17,552	\$12,523	\$17,317	\$16,642	\$15,694	\$16,749	\$16,078	\$17,486	\$16,224
Budget Supp/AA	\$3,242	\$3,136	\$3,125	\$3,140	\$3,127	\$3,145	\$3,124	\$3,122	\$3,156	\$3,133	\$3,151	\$3,145
Budget Pharm/AA	\$1,156	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,127	\$1,128	\$1,127	\$1,126
Budget Net Rev/AA	\$13,206	\$12,461	\$12,428	\$12,543	\$12,368	\$12,545	\$12,398	\$12,368	\$12,579	\$12,483	\$12,539	\$12,624

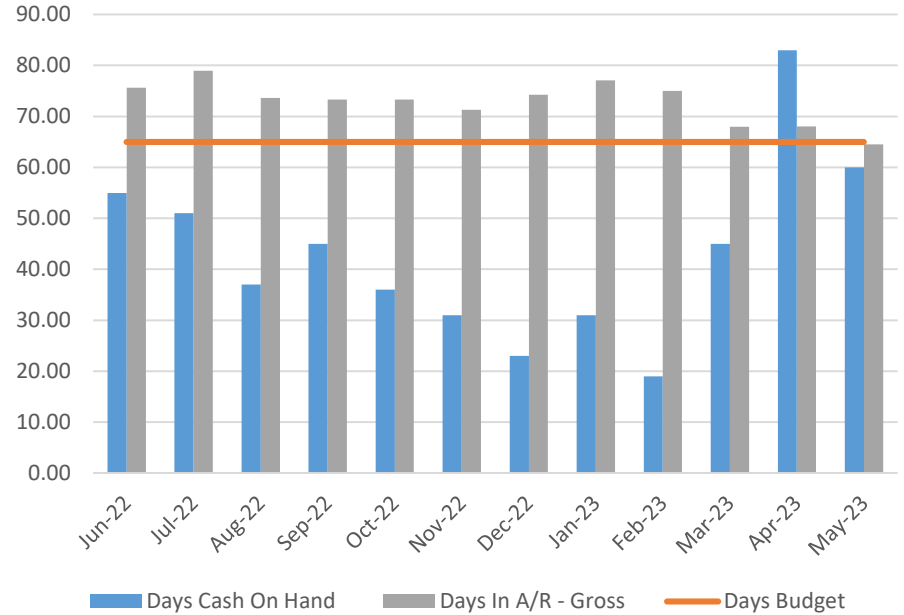
# EBIDA Rolling Year



### Cash Rolling Year



### AR Days Rolling Year



## KERN MEDICAL

### 3-Month Trend Analysis: Revenue & Expense

May 31, 2023

	MARCH	APRIL	MAY	BUDGET MAY	VARIANCE POS (NEG)	PY MAY
<b>Gross Patient Revenue</b>	\$ 99,584,324	\$ 91,861,816	\$ 99,228,998	\$ 94,536,509	5%	\$ 87,231,622
Contractual Deductions	(77,334,591)	(69,360,870)	(75,262,969)	(73,090,795)	3%	(63,324,641)
<b>Net Revenue</b>	22,249,734	22,500,945	23,966,029	21,445,714	11.8%	23,906,980
Indigent Funding	15,691,888	15,234,085	16,191,888	14,370,622	13%	93,576,701
Correctional Medicine	2,608,481	2,608,481	2,608,481	2,746,855	(5%)	2,583,481
County Contribution	285,211	285,211	285,211	291,120	(2%)	285,211
Incentive Funding	0	0	0	0	0%	0
<b>Net Patient Revenue</b>	40,835,313	40,628,722	43,051,609	38,854,311	11%	120,352,372
Other Operating Revenue	3,184,996	1,869,167	85,924	2,243,837	(96%)	2,794,024
Other Non-Operating Revenue	13,996	12,929	1,711,470	49,452	3,361%	2,017,642
<b>Total Revenue</b>	44,034,306	42,510,819	44,849,003	41,147,600	9%	125,164,038
<b>Expenses</b>						
Salaries	17,447,973	17,806,622	19,193,756	16,953,596	13%	16,553,564
Employee Benefits	7,675,317	6,969,277	7,749,770	7,220,910	7%	(14,002,279)
Registry	2,981,647	2,543,355	2,679,781	3,112,025	(14%)	4,675,337
Medical Fees	2,256,951	2,178,445	2,205,580	1,760,888	25%	1,890,822
Other Professional Fees	2,248,224	2,018,576	2,383,920	1,642,185	45%	1,684,929
Supplies	5,625,080	5,167,092	5,166,280	5,343,135	(3%)	3,685,881
Purchased Services	2,463,854	3,057,774	2,476,452	2,355,395	5%	2,140,695
Other Expenses	1,548,735	1,121,375	1,330,266	1,595,229	(17%)	(495,614)
Operating Expenses	42,247,781	40,862,516	43,185,805	39,983,362	8%	16,133,335
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,786,525	\$ 1,648,303	\$ 1,663,198	\$ 1,164,238	43%	\$ 109,030,704
EBIDA Margin	4%	4%	4%	3%	31%	87%
Interest	242,720	141,943	153,918	86,199	79%	346,150
Depreciation	655,522	663,717	664,728	682,877	(2.7%)	677,391
Amortization	754,789	753,251	745,301	300,890	148%	2,728,165
Total Expenses	43,900,811	42,421,427	44,749,752	41,053,328	9%	19,885,041
<b>Operating Gain (Loss)</b>	\$ 133,495	\$ 89,392	\$ 99,251	\$ 94,272	5%	\$ 105,278,998
<b>Operating Margin</b>	0.3%	0.2%	0.2%	0.2%	(3.4%)	84.1%

**KERN MEDICAL**  
**Year to Date: Revenue & Expense**  
 May 31, 2023

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>Gross Patient Revenue</b>	\$ 1,046,470,239	\$ 1,064,479,898	(2%)	\$ 1,056,630,510	(1%)
Contractual Deductions	(796,006,350)	(825,161,921)	(4%)	(805,257,257)	(1%)
<b>Net Revenue</b>	250,463,889	239,317,977	5%	251,373,253	
Indigent Funding	159,089,559	155,295,433	2.4%	243,967,976	(35%)
Correctional Medicine	28,407,613	29,683,757	(4%)	28,276,097	0.5%
County Contribution	3,137,320	3,145,970	(0%)	3,137,635	(0.01%)
Incentive Funding	1,404,200	0	0%	0	0%
<b>Net Patient Revenue</b>	442,502,581	427,443,137	4%	526,754,961	(16%)
Other Operating Revenue	23,834,826	24,382,848	(2%)	28,366,129	(16%)
Other Non-Operating Revenue	1,844,195	534,396	245%	10,420,798	(82%)
<b>Total Revenue</b>	468,181,602	452,360,381	3%	565,541,887	(17%)
<b>Expenses</b>					
Salaries	191,512,584	186,336,998	2.8%	177,935,073	8%
Employee Benefits	79,564,024	78,987,851	0.7%	54,681,853	46%
Registry	32,123,875	34,661,075	(7%)	52,114,148	(38%)
Medical Fees	23,318,128	19,875,347	17%	19,594,871	19%
Other Professional Fees	23,141,111	16,993,040	36%	17,572,522	32%
Supplies	56,362,272	60,129,827	(6%)	62,191,727	(9%)
Purchased Services	27,868,885	25,514,296	9%	21,830,156	28%
Other Expenses	17,478,463	17,238,764	1%	15,416,993	13%
Operating Expenses	451,369,344	439,737,200	3%	421,337,343	7%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 16,812,258	\$ 12,623,181	33%	\$ 144,204,545	(88%)
EBIDA Margin	4%	3%	29%	25%	(86%)
Interest	1,613,048	931,510	73%	1,190,361	36%
Depreciation	7,624,782	7,379,478	3%	7,366,545	4%
Amortization	5,094,047	3,251,549	57%	5,399,117	(6%)
Total Expenses	465,701,220	451,299,736	3%	435,293,365	7%
<b>Operating Gain (Loss)</b>	\$ 2,480,382	\$ 1,060,645	134%	\$ 130,248,522	(98%)
<b>Operating Margin</b>	0.5%	0.2%	126.0%	23.0%	(98%)

**KERN MEDICAL  
BALANCE SHEET**

	MAY 2023	MAY 2022
<b>ASSETS:</b>		
<i>Total Cash</i>	\$ 84,184,316	\$ 67,775,112
Patient Receivables Subtotal	230,038,951	269,601,699
Contractual Subtotal	(174,177,306)	(223,984,977)
<b><i>Net Patient Receivable</i></b>	<b>55,861,644</b>	<b>45,616,723</b>
Total Indigent Receivable	187,558,623	148,101,905
Total Other Receivable	13,532,596	10,233,298
Total Prepaid Expenses	6,210,645	4,094,464
Total Inventory	5,061,390	4,091,211
<b><i>Total Current Assets</i></b>	<b>352,409,215</b>	<b>279,912,711</b>
Deferred Outflows of Resources	105,241,458	127,290,855
Total Land, Equipment, Buildings and Intangibles	243,417,818	223,834,804
Total Construction in Progress	11,622,286	5,698,570
<b><i>Total Property, Plant &amp; Equipment</i></b>	<b>255,040,105</b>	<b>229,533,374</b>
Total Accumulated Depr & Amortization	(153,919,239)	(135,708,528)
<b><i>Net Property, Plant, and Equipment</i></b>	<b>101,120,865</b>	<b>93,824,846</b>
<b><i>Total Long Term Assets</i></b>	<b>105,241,458</b>	<b>127,290,855</b>
<b><i>Total Assets</i></b>	<b>\$ 558,771,538</b>	<b>\$ 501,028,412</b>

**KERN MEDICAL  
BALANCE SHEET**

	MAY 2023	MAY 2022
<b>LIABILITIES &amp; EQUITY:</b>		
Total Accounts Payable	\$ 11,669,070	\$ 14,556,741
Total Accrued Compensation	24,611,723	29,365,978
Total Due Government Agencies	14,790,584	16,228,571
Total Other Accrued Liabilities	25,666,510	37,235,338
<b><i>Total Current Liabilities</i></b>	<b>76,737,887</b>	<b>97,386,628</b>
Unfunded Pension Liability	284,243,193	381,152,811
Other Long-Term Liabilities	130,256,249	64,286,919
<b><i>Total Long-Term Liabilities</i></b>	<b>414,499,442</b>	<b>445,439,730</b>
<b><i>Total Liabilities</i></b>	<b>491,237,329</b>	<b>542,826,357</b>
Fund Balance	36,714,022	36,714,022
Retained Earnings	30,820,187	(78,511,967)
<b><i>Total Fund Balance</i></b>	<b>67,534,209</b>	<b>(41,797,945)</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>\$ 558,771,538</b>	<b>\$ 501,028,412</b>



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

July 19, 2023

**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.





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

July 19, 2023

**Subject:** Monthly report on What's Happening at Kern Medical Center

**Recommended Action:** Receive and File

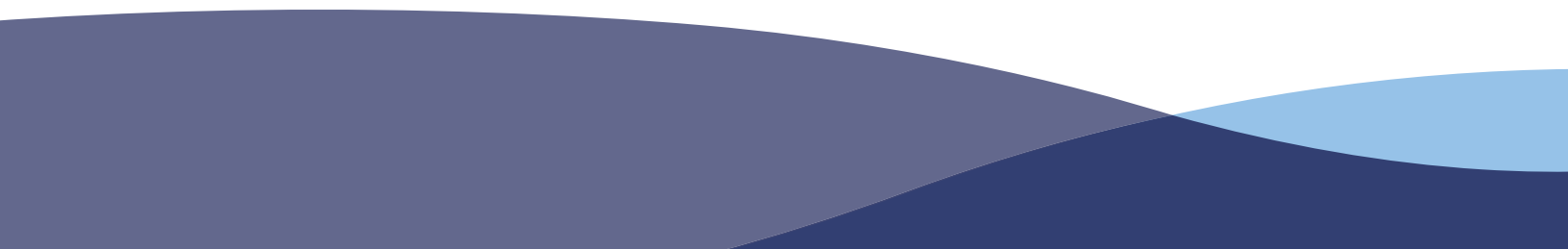
**Summary:**

Each month Kern Medical will be sharing a report with your Board on "What's Happening" in and around Kern Medical.

Therefore, it is recommended that your Board receive and file the attached report on What's Happening at Kern Medical.



*What's Happening?*



# RESEARCH FORUM



# GRADUATE RECOGNITION DINNER



# TEACHING KITCHEN

*Teaching*  
**KITCHEN**  
LEARN • COOK • ENJOY

 KernMedical

**Summer Salad Series**

July 12, 2023

11:30 AM

Volunteer sign-up sheet coming soon!

# KERN MEDICAL IN THE NEWS





# HOUCHIN BLOOD DRIVE

# blood drive

DONATE TO  
RECEIVE A  
HOUCHIN T-SHIRT



**THURSDAY, JUNE 29 • 9:00 AM - 2:00 PM**

**KERN MEDICAL**

1700 MT. VERNON AVENUE • BAKERSFIELD, CA. 93306

TO MAKE AN APPOINTMENT, VISIT [HCBB.COM/SCHEDULE](https://www.hcbb.com/schedule)

*when you give, people live*

**HOUCHIN**   
COMMUNITY BLOOD BANK

# DID YOU KNOW?



## Fireworks Injuries

### Dr. David Bowen

Kern Medical has the county's only hand surgeons that are available 24/7. In Dr. Bowen's 30 year career, he has seen the most devastating hand injuries in the last 3 to 4 years. These injuries can be life threatening, as well as life altering.

Dr. Bowen says these injuries are not limited to adolescents he has seen adults with devastating fireworks related injuries. Almost always, it is the dominant hand that is injured, which significantly impacts a person's life.

Dr. Bowen's professional recommendation is to leave fireworks to the professionals and keep your distance.

# GRADUATE MEDICAL EDUCATION

## Weekly Noon Lecture Series

June

15 | Pain Management: Narcotics by Warren Wisnoff, DO

July

3 | The Elements of Writing Medication Orders by Jeff Jolliff, PharmD

6 | The ABCs of ACGME by Amir Berjis, MD

13 | How to Survive 1st Year of Residency by Sabitha Eppanapally, MD

20 | Burnout: Defining the Problem by Shahzad Chaudhry, LMFT

27 | ABCs of IRB by Kayvon Milani

# NATIONAL RECOGNITIONS IN JUNE

- Alzheimer's and Brain Awareness Month
- PTSD Awareness Month
- Suicide Prevention Month
- National Safety Month
- Cataract Awareness Month
- Men's Health Month
- National Scoliosis Awareness
- National CPR and AED Awareness Week (June 1 - 7)
- National Cancer Survivors Day (June 3)
- World Blood Donor Day (June 14)
- Rare Chromosomes Disorder Awareness Day (June 16)
- World Sickle Cell Day (June 19)



# NATIONAL RECOGNITIONS IN JULY

- Cord Blood Awareness Month
- National Cleft & Craniofacial Awareness and Prevention Month
- National Hemochromatosis Awareness Month
- National Minority Mental Health Awareness Month
- Sarcoma Awareness Month
- Eye Injury Prevention Month
- UV Awareness Month
- World Population Day (July 11)
- World Brain Day (July 22)
- World Hepatitis Day (July 28)

**From:** [George Pfister](#)  
**To:** [Public Comment](#)  
**Subject:** Questions for 6/21/23 Board of Governors Meeting  
**Date:** Monday, June 19, 2023 5:00:34 AM

---

Hi my name is George Pfister and I am a CNL on the BHU at Kern Medical.

These questions not related to any agenda items.

My questions are as such: In regards to the timeline whereby Kern Medical has to have a new hospital by 2030 I was wondering how this is progressing? What is the next step that needs to be accomplished in order to meet this goal on time? Please list all of the steps that are required in order to meet this goal. Has a new location been selected? If not, are there prospective locations? If so, where? What is the projected cost and how will this be financed?

Thanks for your time,

**BOARD OF SUPERVISORS  
COUNTY OF KERN**

**SUPERVISORS**

**PHILLIP PETERS  
ZACK SCRIVNER  
JEFF FLORES  
DAVID COUCH  
LETICIA PEREZ**

District 1  
District 2  
District 3  
District 4  
District 5



**KATHLEEN KRAUSE**  
**CLERK OF THE BOARD OF SUPERVISORS**  
Kern County Administrative Center  
1115 Truxtun Avenue, 5th Floor  
Bakersfield, CA 93301  
Telephone (661) 868-3585  
TTY (800) 735-2929  
[www.kerncounty.com](http://www.kerncounty.com)

June 13, 2023

Mr. Stephen Pelz

Bakersfield, CA

Dear Mr. Pelz:

Congratulations on your re-appointment to the Kern County Hospital Authority Board of Governors.

Enclosed is the Official Appointment covering your re-appointment as Community Member at Large to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2026.

Pursuant to State law, you are required to complete a course in ethics training approved by the Fair Political Practices Commission and Attorney General. You must receive the required training within one year of your appointment and every two years thereafter. Your Agency's Manager will provide information regarding training opportunities.

On behalf of the Kern County Board of Supervisors, I would like to extend our sincere appreciation for your commitment to serve on the Kern County Hospital Authority Board of Governors. If my office can ever be of assistance to you, please call on us.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Krause".

**KATHLEEN KRAUSE**  
Clerk of the Board

Enclosure

cc: Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306

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

(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on July 19, 2023, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

  X   Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –

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

(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on July 19, 2023, 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 facilities (Health and Safety Code Section 101855(j)(2)) –

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on July 19, 2023, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

- X   CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(d)(2) & (e)(2)) Number of cases: One (1)  
Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Meridian Healthcare Partners, Inc. –

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on July 19, 2023, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital  
Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/  
Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB –

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on July 19, 2023, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521, Charging Party, v. Kern County Hospital Authority,  
Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –



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

(Government Code Section 54957.7)

The Board of Governors will hold a closed session on July 19, 2023, to consider:

- X   CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –

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

Government Code Section 54957.7

The Board of Governors will hold a closed session on July 19, 2023, to consider:

  X   CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employees (Government Code Section 54957.6)

—