



## **AGENDA**

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

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

Regular Meeting  
Wednesday, May 18, 2016

11:30 A.M.

#### **BOARD TO RECONVENE**

Board Members: Berjis, Bigler, McGauley, McLaughlin, Nilon, Sistrunk  
Roll Call:

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

STAFF RECOMMENDATION SHOWN IN CAPS

PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for Kern County Hospital Authority Board of Governors regular meeting on May 4, 2016 –  
APPROVE
- 4) Proposed presentation by the Kern Medical Chief Financial Officer regarding areas of responsibility –  
HEAR PRESENTATION; RECEIVE AND FILE
- 5) Proposed approval of finance, patient financial services, medical records, patient registration, and purchasing policies –  
APPROVE POLICIES
- 6) Proposed Kern County Hospital Authority operating and capital budget for Fiscal Year 2016-2017 –  
APPROVE; REFER TO KERN COUNTY BOARD OF SUPERVISORS FOR APPROVAL

CA

- 7) Response to referral for opinion on the proposed delegation of authority to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services (from March 30, 2016) –  
RECEIVE AND FILE

CA

- 8) Proposed Resolution delegating authority to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services and proposed appointment of Chief Executive Officer as Purchasing Agent and Agency Designated Representative for labor negotiations –  
APPROVE; APPOINT CHIEF EXECUTIVE OFFICER AS PURCHASING AGENT OF KERN COUNTY HOSPITAL AUTHORITY; APPOINT CHIEF EXECUTIVE OFFICER AS AGENCY DESIGNATED REPRESENTATIVE FOR LABOR NEGOTIATIONS WITH EMPLOYEE ORGANIZATIONS SUBJECT TO DIRECTION FROM THE BOARD OF GOVERNORS; ADOPT RESOLUTION
- 9) Proposed presentation by the Kern Medical Chief Operating Officer regarding areas of responsibility –  
HEAR PRESENTATION; RECEIVE AND FILE
- 10) Proposed approval of ancillary and support services policies –  
APPROVE POLICIES
- 11) Proposed presentation by the Kern Medical Vice President of Administrative Services regarding areas of responsibility –  
HEAR PRESENTATION; RECEIVE AND FILE

CA

- 12) Proposed Agreement with the County of Kern, as represented by the Kern County Sheriff's Office-Coroner Section, for storage and transportation services from July 1, 2016 through June 30, 2018 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Transition Services Agreement with the County of Kern for purchase of certain specified transition administrative services from July 1, 2016 through June 30, 2017, and proposed designation of Chief Executive Officer or designee as Authority Contracting Officer –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN; DESIGNATE CHIEF EXECUTIVE OFFICER OR DESIGNEE AS AUTHORITY CONTRACTING OFFICER

CA

- 14) Proposed Agreement with the County of Kern and Kern County Treasurer-Tax Collector for adoption of the County of Kern Deferred Compensation Plan (Plan 1) and the County of Kern Deferred Compensation Plan – Part-time, Seasonal, Temporary Employees (Plan 2), effective July 1, 2016 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Agreement with the County of Kern, as represented by the Department of Child Support Services, for paternity-related services from July 1, 2016 through June 30, 2021 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Agreement with the County of Kern, as represented by the Department of Human Services, for professional medical services for children at A. Miriam Jamison Children Center from July 1, 2016 through June 30, 2018 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Agreement with the County of Kern, as represented by the Kern County Public Health Services Department-Emergency Medical Services Division, for EMS Base Hospital services from July 1, 2016 through June 30, 2019 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 18) Proposed Agreement with the County of Kern, as represented by the Kern County Public Health Services Department and Kern County Sheriff's Department-Probation, for public health and related services from July 1, 2016 through June 30, 2019 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 19) Proposed Interfacility Transfer Agreement with the County of Kern, as represented by the Kern County Public Health Services Department, effective July 1, 2016 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 20) Proposed Agreement with the County of Kern and Civil Service Commission, County of Kern regarding the resolution of appeals pending before the Civil Service Commission, effective July 1, 2016 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 21) Proposed recommendation of nominees to fill one open Director position –  
MAKE RECOMMENDATION; REFER TO KERN COUNTY BOARD OF SUPERVISORS FOR APPOINTMENT

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

CLOSED SESSION

- 23) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –
- 24) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Kern County Hospital Authority Chief Executive Officer (Government Code Section 54957) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, JUNE 22, 2016, 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.



## **SUMMARY OF PROCEEDINGS**

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

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

Regular Meeting  
Wednesday, May 4, 2016

11:30 A.M.

BOARD RECONVENED

Directors present: Berjis, Bigler, McGauley, McLaughlin, Nilon

Directors absent: Sistrunk

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

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

BOARD ACTION SHOWN IN CAPS

#### PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Also, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**  
**NO ONE HEARD**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

DIRECTOR BERJIS EXTENDED AN INVITATION TO THE BOARD MEMBERS AND PUBLIC TO ATTEND THE KERN MEDICAL RESIDENT RESEARCH FORUM ON THURSDAY, MAY 5, 2016

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for Kern County Hospital Authority Board of Governors regular meeting on March 30, 2016 –  
APPROVED  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**

CA

- 4) Proposed Resolution for continued participation of eligible employees in the California State Disability Insurance program –  
APPROVED; ADOPTED RESOLUTION 2016-007  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**

- 5) Proposed Master Contract for the Transfer of Health Facilities with County of Kern for the transfer of ownership of Kern Medical Center to Kern County Hospital Authority, effective July 1, 2016, and Resolution providing for the approval of the Master Contract (Fiscal Impact: None) –  
MADE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15320 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED; ADOPTED RESOLUTION 2016-008; AUTHORIZED CHAIRMAN TO SIGN SUBJECT TO APPROVAL BY COUNSEL  
**Berjis-McLaughlin: 5 Ayes; 1 Absent - Sistrunk**

- 6) Proposed presentation by the Kern Medical Chief Nursing Officer regarding overview of the Nursing and related departments –  
HEARD PRESENTATION; RECEIVED AND FILED  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**

- 7) Proposed approval of Nursing and related department policies –  
APPROVED POLICIES  
**McGauley-Nilon: 5 Ayes; 1 Absent - Sistrunk**

- 8) Proposed presentation by the Kern Medical Vice President of Ambulatory Services regarding overview of the clinics and other outpatient services –  
HEARD PRESENTATION; RECEIVED AND FILED  
**McGauley-Nilon: 5 Ayes; 1 Absent - Sistrunk**
- 9) Proposed approval of ambulatory care service policies –  
APPROVED POLICIES  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**
- CA  
10) Proposed approval of Kern County Hospital Authority Conflict of Interest policy –  
APPROVED POLICY  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**
- CA  
11) Proposed approval of Kern County Hospital Authority Conflict of Interest Code –  
APPROVED; REFERRED TO KERN COUNTY BOARD OF SUPERVISORS FOR APPROVAL  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**
- CA  
12) Proposed Agreement with County of Kern for workers' compensation claims administration services –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**
- CA  
13) Proposed retroactive Business Associate Agreement with County of Kern for Medical Staff data sharing including protected health information, effective May 3, 2016 (Fiscal Impact: None) –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**
- 14) Appoint a nominating committee to recommend nominees to fill one open Director position –  
APPOINTED DIRECTORS McGAULEY, McLAUGHLIN AND NILON  
**Berjis-Nilon: 5 Ayes; 1 Absent - Sistrunk**
- CA  
15) Request to establish a budget unit in the County of Kern financial management system for capital projects –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN CORRESPONDENCE REQUESTING ESTABLISHMENT OF BUDGET UNIT  
**Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk**

- 16) Response to referral to report on key factors that caused the Kern Medical Financial crisis over the past few years and future major risk areas (from April 20, 2016) – RECEIVED AND FILED  
**McLaughlin-McGauley: 5 Ayes; 1 Absent - Sistrunk**
- 17) Kern County Hospital Authority Chief Executive Officer report – RECEIVED AND FILED  
**McLaughlin-Berjis: 5 Ayes; 1 Absent - Sistrunk**

ADJOURNED TO CLOSED SESSION  
**Nilon-McGauley**

CLOSED SESSION

- 18) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organization: SEIU Local 521 (Government Code Section 54957.6) – SEE RESULTS BELOW
- 19) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2), (e)(3).) 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: 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

RECONVENED FROM CLOSED SESSION  
**McGauley-Berjis**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 18 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organization: SEIU Local 521 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 19 concerning CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2), (e)(3).) 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: 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

ADJOURNED TO WEDNESDAY, MAY 18, 2016 AT 11:30 A.M.

**Berjis**

/s/ Raquel D. Fore  
Authority Board Coordinator

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



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

May 18, 2016

**SUBJECT: Presentation by Kern Medical's Chief Financial Officer.**

**Recommended Action: Hear Presentation; Receive and File.**

**Summary:**

The role of Chief Financial Officer (CFO) includes the responsibility to oversee and coordinate all Financial Services provided within the Hospital.



Andy Cantu  
Chief Financial Officer

Kern Medical Board of Governors  
May 18, 2016

# Chief Financial Officer (CFO)

## Role

- Steward – Control
- Operator – Efficiency
- Strategist – Performance
- Catalyst - Execution

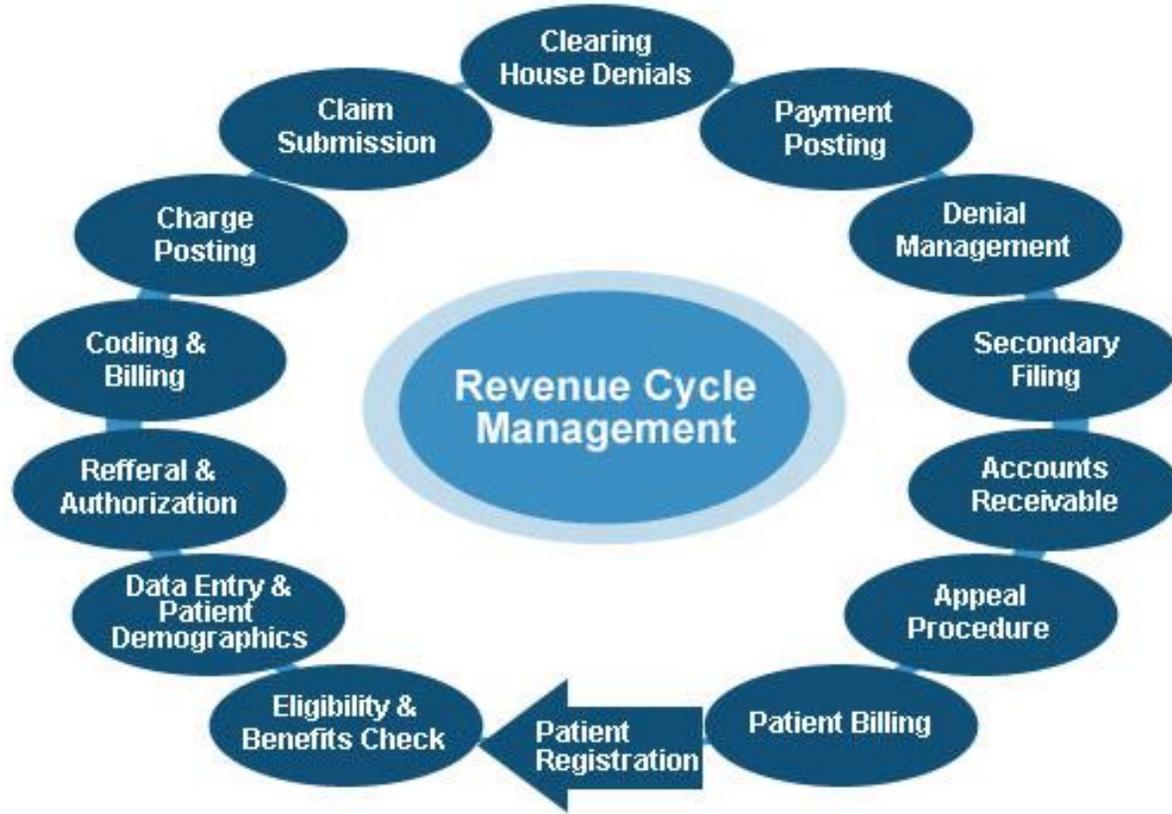
# CFO Responsibilities

## Departments

- Patient Access
- Health Information Management
- Patient Financial Services
- Finance
- Materials Management
- Information Technology

# CFO Responsibilities

## Revenue Cycle





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

May 18, 2016

**SUBJECT: Proposal to adopt Policies for the Kern County Hospital Authority for all Finance support service departments presented by the Chief Financial Officer.**

**Recommended Action: Approve Policies**

**Summary:**

The Chief Financial Officer oversees policies for the following departments:

- Patient Access
- Health Information Management
- Patient Financial Services
- Finance
- Materials Management
- Information Technology



Andy Cantu  
Chief Financial Officer  
Department/Policy Overview

Kern Medical Board of Governors  
May 18, 2016

# Patient Access – 43 Policies

## Admissions & Registration

- PAC-IM-401 Emergency Room Registration
- PAC-IM-432 Trauma Registration
- PAC-IM-418 Pre-registration/Registration for Surgery
- PAC-IM-419 Pre-registration Obstetric Patients

## Clinics

- PAC-IM-416 Registration for Outpatient Clinics & Diagnostic Testing
- PAC-IM-421 Pre-registration Authorizations/Scheduling
- PAC-IM-985 Orders for Outpatient Tests & Services

## Compliance

- PAC-IM-965 Patient Rights
- PAC-IM-970 Important Message from Medicare
- PAC-IM-975 Notice of Privacy Practices
- PAC-IM-980 Medical Necessity Verification (ABN)

## Financial Assistance

- PAC-IM-403 Referral Self Pay for Medi-Cal Application
- PAC-IM-404 Insurance Verification

# Health Information Management – 38 policies

## Organization

- Scope of Service
- The Legal Medical Record
- Access to the HIM Department
- Computer Downtime Procedure
- Monitoring of Duplicate MPI Entries

## Medical Legal

- Response to Request for Release of Information
- Death Certificates
- Medical Record Copy Service
- Subpoena for Medical Information
- Completion of State Disability Claims, and other Forms and Letters

## Coding

- Coding of Medical Records
- Abstracting of Medical Record Information
- Unbilled Account Management
- Compliance

## Medical Record Completion

- Analysis of Medical Record
- Chart Deficiency and Assignments
- Retiring of Incomplete Medical Record

## Paper Record Processing

- Reconciliation and Accounting of Medical Records
- Format Chart Assembly
- Scanning of Medical Records
- Quality Control and Indexing

## Transcription

- Transcription Software
- Quality review

## Storage and Retrieval

- Records Retention and Destruction
- Storage Maintenance
- Chart Transportation
- Filing System for Scanned Records

# Patient Financial Services – 40 policies

## Patient Accounting

- Ancillary Corrections/Adjustments
- AR Request
- Changing Follow Up Schedules
- Collection Agency Payment Reconciliation
- F/C M and MB Accounts
- F/C Q Accounts
- Finance Department Adjustment Policy
- Insurance Follow Up
- Late Charges
- Mom and Baby Accounts
- Overpayments and Returns Refunds
- Payment Transfers
- Performance of Standard Billing Procedures
- Post Balance Transfers
- STAR Notes
- Third Party Claims Denial Process
- Transfer BD to AR
- Unprelisting Accounts
- Billing and Follow Up Financial Class Q

# Finance – 16 Policies

## General Ledger Accounting

- Balance Sheet Account Reconciliations
- Guidelines for Reimbursement and Contractual Reserves Calculations
- Guidelines for Establishing Bad Debt Reserves
- Guidelines for Government Receivables and Revenues
- Expense Recognition & Accrued Liabilities
- Prepaid Expenses
- Cost Report Preparation
- False Cost Reports
- County Financial Management System (FMS) Reconciliation
- Budgetary Controls

## Capital Asset Accounting

- Guidelines for Capitalization of Assets
- Physical Inventory of Fixed Assets

## Accounts Payable

- Vendor Payment Practices
- Approval Levels for Requisitioning
- Procurement to Payment
- Unclaimed Property and Refunds

# Materials Management – 7 Policies

## Operations

- Materials Management-General

## Center Supply

- Central Supply Cart

## Mailroom

- Mailroom and Messenger Duties

## Procurement

- Blanket Purchase order
- Competitive Bidding

## Logistics

- Warehouse Distribution
- Receiving Inspection and Receipt of Damaged Goods



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

May 18, 2016

**SUBJECT: Presentation by Kern Medical's Chief Financial Officer.**

**Recommended Action: Approve; Refer to Kern County Board of Supervisors for Approval.**

**Summary:**

Chief Financial Officer will provide the Board a report on the Kern County Hospital Authority operating and capital budgets for Fiscal Year 2016-2017.



## **Operating Budget**

Andy Cantu

Chief Financial Officer

Kern Medical Board of Governors

May 18, 2016

# Budget for Fiscal Year 2017

	ACTUAL FY16 JUL - MAR	PROJECTED YEAR END FY16	BUDGET FY17
<b>Total Gross Charges</b>	\$ 542,025,005	\$ 718,017,073	\$ 799,337,619
<b>Total Patient Revenue Deductions</b>	(403,731,937)	(543,465,724)	(604,574,212)
<b>Net Patient Revenue</b>	138,293,068	174,551,349	194,763,407
<b>Indigent Funding</b>			
Correctional Medicine	10,263,430	22,871,003	22,663,037
County Indigent Funding	5,601,255	7,000,000	3,500,000
State Indigent Funding	64,236,083	83,609,509	81,716,189
<b>Total County and State Indigent Funding</b>	80,100,768	113,480,512	107,879,226
<b>Capitation Premium Revenue</b>	9,500,000	12,000,000	8,000,000
<b>Other Operating Revenue</b>	9,691,942	13,415,340	13,017,555
<b>Total Operating Revenue</b>	237,585,778	313,447,201	323,660,188
<b>Expenses</b>			
Salaries	92,833,943	123,079,405	133,046,432
Benefits	47,221,304	63,242,210	66,252,769
Registry Nurses	4,747,413	5,756,649	6,931,179
Medical Fees	11,368,379	16,000,000	16,387,030
Purchased Services	22,851,094	30,436,127	30,959,211
Supplies	36,292,532	45,637,515	45,333,505
Repairs and Maintenance	2,785,291	3,451,034	3,376,270
Other Expenses	11,663,311	11,669,719	13,538,496
Interest	261,073	588,385	588,385
Depreciation and Amortization	3,988,793	5,292,084	5,292,084
<b>Operating Expenses</b>	234,013,133	305,153,128	321,705,361
<b>Gain/(Loss) From Operations</b>	3,572,645	8,294,073	1,954,827
<b>Non-Operating Revenue</b>	664,030	-	-
<b>Earnings Before Depreciation and Amortization</b>	\$ 8,225,468	\$ 13,586,157	\$ 7,246,911
<b>Net Income/(Loss)</b>	\$ 4,236,675	\$ 8,294,073	\$ 1,954,827

# Capital Expenditures for Fiscal Year 2017

	<u>Operating Equipment</u>	<u>IT Capital Projects</u>	<u>Capital Building and Construction</u>	<u>Total</u>
Replacement Equipment	\$ 683,967	\$ 2,106,589	\$ 2,603,000	\$ 5,393,556
Additional Equipment	<u>1,853,355</u>	<u>-</u>	<u>-</u>	<u>1,853,355</u>
Total Capital Expenditures	<u>\$ 2,537,322</u>	<u>\$ 2,106,589</u>	<u>\$ 2,603,000</u>	<u><b>\$ 7,246,911</b></u>



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

May 18, 2016

**SUBJECT: Response to referral on the proposed delegation of authority to the Chief Executive Officer of the Kern County Hospital Authority to enter into contracts and to secure and pay for certain professional and special services (from March 30, 2016)**

**Required Action: Receive and File.**

On March 30, 2016, your Board was asked to adopt a resolution delegation authority to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services required by Kern Medical, without the necessity of referring each item to your Board for approval. The request was made to facilitate timely operations at the hospital.

At the request of Director Nilon, the item was continued and a referral was made by your Board to staff for an opinion on the propriety of the proposed delegation. Upon review, Counsel has determined that the request to delegate authority to the Chief Executive Officer to enter into certain specified contracts and to secure and pay for those certain professional and special services set forth in the attached Exhibit "A" meets all legal requirements under laws applicable to the Hospital Authority.

As a separate item (Item 8), your Board will be asked to adopt a resolution consistent with Counsel's response to this referral.

## EXHIBIT "A"

**Section I.** The Chief Executive Officer shall be the Purchasing Agent for the Kern County Hospital Authority ("Hospital Authority"). As provided herein, the Purchasing Agent shall have the responsibility to evaluate proposed purchases in order to bid or negotiate requisitions and contracts on behalf of the Hospital Authority. All purchases, rentals and contracts made by the Purchasing Agent shall be binding and constitute a lawful charge against the Hospital Authority. The Purchasing Agent or designee shall have the authority to:

1. Secure goods or services for the proper operation of the health facilities costing a maximum \$250,000 per year with a maximum cumulative total not to exceed \$750,000, unless otherwise specified in this Exhibit. Agreements that exceed a cumulative total greater than \$250,000 that do not contain a termination without cause provision or are subject to the Public Contract Code must be approved by the Board of Governors.
2. Secure goods for the proper operation of the pharmacies, clinical laboratory, and operating room that may exceed the amount set forth above.
3. Enter into professional and specialized medical services that may exceed the specified amount set forth above, including without limitation, the following:
  - A. Medical services that are beyond the capability of employed staff to provide.
  - B. Medical services of a very specialized nature which are not available at Kern Medical.
  - C. Medical services that require special equipment or facilities that are not available at Kern Medical.
  - D. Medical services that are infrequent in occurrence, are unpredictable in volume and costs, and therefore may not be identified specifically in the Hospital Authority budget.
  - E. Medical services that are necessary to provide patient care or services to patients in an emergent situation.
  - F. Patient-specific letters of agreement.
  - G. Letters of agreement for medical services not provided at Kern Medical.
4. Process and pay for administrative penalties (any administrative penalty that does not exceed \$50,000; County Counsel shall review any notice of administrative penalty to determine whether a hearing to dispute the penalty is warranted and approve all settlement agreements, if any, negotiated between the Hospital Authority and the relevant agency, prior to payment of the penalty).
5. Negotiate and execute routine agreements that typically do not require the expenditure of funds or are revenue agreements, including without limitation, the following:
  - A. Indemnification agreements
  - B. Provider transfer agreements

- C. Organ/tissue and blood services agreements
  - D. Accreditation contracts with The Joint Commission
  - E. Business Associate Agreements (BAA)
  - F. Provider participation agreements
  - G. Quality collaborative agreements
  - H. Affiliation agreements
  - I. Payer/provider agreements
  - J. Affiliation agreements
  - K. Peer review sharing agreements
  - L. Waivers and Inter-governmental Transfer (IGT) documents and agreements
6. Accept and execute contracts previously approved by the Kern County Board of Supervisors that are being assigned by the County of Kern to the Hospital Authority that may exceed the specified amounts set forth above.
  7. The Chief Executive Officer shall provide the Board of Governors a written report quarterly on expenditures paid pursuant to paragraphs 3 and 4 above.

**Section II.** The Chief Executive Officer shall have the following delegated authority for the proper staffing of the health facilities and shall be the Agency Designated Representative for labor negotiations with employee organizations, as directed by the Board of Governors. The Chief Executive Officer shall have the authority to:

1. Negotiate within the established physician compensation model, and execute individual physician agreements with a not to exceed amount of \$500,000 per year, including multi-year agreements that do not exceed a term of three years, with a maximum cumulative payable of \$1,500,000.
2. Add and delete existing classifications required to provide hospital services that were not previously included in the adopted budget while not exceeding total expense appropriations.
3. Create new job classifications and establishing salary ranges for new classifications. Salary ranges for management, mid-management, confidential and unrepresented classifications must be within the Board of Governors approved salary pay bands.
4. Meet and confer with employee organizations unless it involves matters related to MOU negotiation/approval, impasse, mediation, fact finding, or implementing any best and final offer.

**Section III.** The Chief Executive Officer shall establish budgetary controls and be the official responsible to administer such controls. The Chief Executive Officer shall have authority to:

1. Approve budgetary transfers and revisions of appropriations within a budget unit or budget units that do not increase spending authority.

2. Spend surplus revenue subject to the limitations in the Agreement for Health Care Services, Finance and Support with the County of Kern and the amount set forth in Section I, under Purchasing Agent authority.
3. Substitute capital assets and capital or maintenance projects after the adoption of the budget that does not increase spending authority.

**Section IV.** The Chief Executive Officer shall be the official responsible to review pending legislation and chaptered laws to evaluate the impact on Hospital Authority operations and shall have the authority to:

1. Write advocacy letters on behalf of the Hospital Authority.
2. Accept and receive any donations or grants on behalf of Kern Medical and on behalf of its physicians.
3. Utilize Board-approved strategic initiatives that require immediate action, subject to any limitations set forth herein.



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

May 18, 2016

**SUBJECT: Proposed Resolution delegating authority to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services and proposed appointment of Chief Executive Officer as Purchasing Agent and Agency Designated Representative for labor negotiations.**

**Recommended Action: Approve; Appoint Chief Executive Officer as Purchasing Agent of Kern County Hospital Authority; Appoint Chief Executive Officer as agency designated representative for labor negotiations with employee organizations subject to direction from the Board of Governors; Adopt Resolution**

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

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In the matter of:

Resolution No. \_\_\_\_\_

**DELEGATING AUTHORITY TO THE CHIEF  
EXECUTIVE OFFICER OF THE KERN COUNTY  
HOSPITAL AUTHORITY TO ENTER INTO  
CONTRACTS AND TO SECURE AND PAY FOR  
CERTAIN PROFESSIONAL AND SPECIAL  
SERVICES**

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I, RAQUEL D. FORE, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Transitional Governing Board of the Kern County Hospital Authority at an official meeting thereof on the 18th day of May, 2016, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

**RAQUEL D. FORE**  
Authority Board Coordinator  
Kern County Hospital Authority

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Raquel D. Fore

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**RESOLUTION**

Section 1. WHEREAS:

(a) The Kern County Hospital Authority Act (Health & Saf. Code, § 101852 et seq.) (the "Act") states the Kern County Hospital Authority ("Hospital Authority") shall have the power "*to enter into one or more contracts or agreements, including, but not limited to, contracting with any public or private entity or person for management or other*

*services and personnel, and to authorize the chief executive officer to enter into contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in [the Act].” (Health & Saf. Code, § 101855(a)(9).); and*

(b) The Hospital Authority Bylaws for Governance (“Bylaws”) provide that *“the Chief Executive Officer shall be the general manager of the Hospital Authority, and shall have the authority to exercise executive supervision over the general business and affairs of the Hospital Authority in accordance with the statement of duties and responsibilities adopted by the Board of Governors, including, but not limited, to the following: (h) such duties assigned by the Board of Governors and required by these Bylaws or applicable law.” (Bylaws, section 5.02.)*

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

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

2. The Chief Executive Officer is hereby appointed as the Purchasing Agent for the Kern County Hospital Authority.

3. The Chief Executive Officer is hereby appointed as the Agency Designated Representative for labor negotiations, as directed by this Board.

4. This Board hereby delegates authority to the Chief Executive Officer of the Kern County Hospital Authority to enter into the contracts and to secure and pay for those certain professional and special services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference.

5. County Counsel shall review all agreements for approval as to legal form.

6. The Chief Executive Officer shall provide periodic reports to this Board on the expenditures paid pursuant to this authorization, as set forth in Exhibit “A.”

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

County Administrative Office  
Office of County Counsel  
Kern Medical Center

## EXHIBIT "A"

**Section I.** The Chief Executive Officer shall be the Purchasing Agent for the Kern County Hospital Authority ("Hospital Authority"). As provided herein, the Purchasing Agent shall have the responsibility to evaluate proposed purchases in order to bid or negotiate requisitions and contracts on behalf of the Hospital Authority. All purchases, rentals and contracts made by the Purchasing Agent shall be binding and constitute a lawful charge against the Hospital Authority. The Purchasing Agent or designee shall have the authority to:

1. Secure goods or services for the proper operation of the health facilities costing a maximum \$250,000 per year with a maximum cumulative total not to exceed \$750,000, unless otherwise specified in this Exhibit. Agreements that exceed a cumulative total greater than \$250,000 that do not contain a termination without cause provision or are subject to the Public Contract Code must be approved by the Board of Governors.
2. Secure goods for the proper operation of the pharmacies, clinical laboratory, and operating room that may exceed the amount set forth above.
3. Enter into professional and specialized medical services that may exceed the specified amount set forth above, including without limitation, the following:
  - A. Medical services that are beyond the capability of employed staff to provide.
  - B. Medical services of a very specialized nature which are not available at Kern Medical.
  - C. Medical services that require special equipment or facilities that are not available at Kern Medical.
  - D. Medical services that are infrequent in occurrence, are unpredictable in volume and costs, and therefore may not be identified specifically in the Hospital Authority budget.
  - E. Medical services that are necessary to provide patient care or services to patients in an emergent situation.
  - F. Patient-specific letters of agreement.
  - G. Letters of agreement for medical services not provided at Kern Medical.
4. Process and pay for administrative penalties (any administrative penalty that does not exceed \$50,000; County Counsel shall review any notice of administrative penalty to determine whether a hearing to dispute the penalty is warranted and approve all settlement agreements, if any, negotiated between the Hospital Authority and the relevant agency, prior to payment of the penalty).
5. Negotiate and execute routine agreements that typically do not require the expenditure of funds or are revenue agreements, including without limitation, the following:
  - A. Indemnification agreements
  - B. Provider transfer agreements

- C. Organ/tissue and blood services agreements
  - D. Accreditation contracts with The Joint Commission
  - E. Business Associate Agreements (BAA)
  - F. Provider participation agreements
  - G. Quality collaborative agreements
  - H. Affiliation agreements
  - I. Payer/provider agreements
  - J. Affiliation agreements
  - K. Peer review sharing agreements
  - L. Waivers and Inter-governmental Transfer (IGT) documents and agreements
6. Accept and execute contracts previously approved by the Kern County Board of Supervisors that are being assigned by the County of Kern to the Hospital Authority that may exceed the specified amounts set forth above.
  7. The Chief Executive Officer shall provide the Board of Governors a written report quarterly on expenditures paid pursuant to paragraphs 3 and 4 above.

**Section II.** The Chief Executive Officer shall have the following delegated authority for the proper staffing of the health facilities and shall be the Agency Designated Representative for labor negotiations with employee organizations, as directed by the Board of Governors. The Chief Executive Officer shall have the authority to:

1. Negotiate within the established physician compensation model, and execute individual physician agreements with a not to exceed amount of \$500,000 per year, including multi-year agreements that do not exceed a term of three years, with a maximum cumulative payable of \$1,500,000.
2. Add and delete existing classifications required to provide hospital services that were not previously included in the adopted budget while not exceeding total expense appropriations.
3. Create new job classifications and establishing salary ranges for new classifications. Salary ranges for management, mid-management, confidential and unrepresented classifications must be within the Board of Governors approved salary pay bands.
4. Meet and confer with employee organizations unless it involves matters related to MOU negotiation/approval, impasse, mediation, fact finding, or implementing any best and final offer.

**Section III.** The Chief Executive Officer shall establish budgetary controls and be the official responsible to administer such controls. The Chief Executive Officer shall have authority to:

1. Approve budgetary transfers and revisions of appropriations within a budget unit or budget units that do not increase spending authority.

2. Spend surplus revenue subject to the limitations in the Agreement for Health Care Services, Finance and Support with the County of Kern and the amount set forth in Section I, under Purchasing Agent authority.
3. Substitute capital assets and capital or maintenance projects after the adoption of the budget that does not increase spending authority.

**Section IV.** The Chief Executive Officer shall be the official responsible to review pending legislation and chaptered laws to evaluate the impact on Hospital Authority operations and shall have the authority to:

1. Write advocacy letters on behalf of the Hospital Authority.
2. Accept and receive any donations or grants on behalf of Kern Medical and on behalf of its physicians.
3. Utilize Board-approved strategic initiatives that require immediate action, subject to any limitations set forth herein.



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

May 18, 2016

**SUBJECT: Roles and Responsibilities Presentation by Kern Medical's Chief Operating Officer.**

**Recommended Action: Hear Presentation; Receive and File**

**Summary:**

The Chief Operating Officer (COO) will introduce the ancillary and support departments and the roles and responsibilities of the Chief Operating Officer to oversee these departments.



## **Chief Operating Officer Departmental Overview**

Kern County Hospital Authority Board of Governors  
May 18, 2016

# Chief Operating Officer Departments

- Cardiopulmonary Services:
  - Cardiac Diagnostic Lab
  - Pulmonary Function Lab
  - Electrocardiology
  - Respiratory Therapy
- Construction Services
- Dietary:
  - Food & Nutrition
  - Café
  - Catering
- Electroencephalography
- Engineering:
  - Grounds
  - Biomedical Engineering
  - Stationary Engineers
  - Plumbing, Electrical, HVAC, etc.
- Environmental Services:
  - Central Transportation
  - Communications
- Environmental Services (Cont.):
  - Housekeeping
  - Laundry & Linen
- Laboratory:
  - Blood Bank
  - Chemistry
  - Hematology
  - Microbiology
  - Pathology
- Physical Therapy
- Radiology:
  - Catheterization Lab
  - Computed Tomography
  - Magnetic Resonance Imaging
  - Nuclear Medicine
  - Ultrasound
- Security

# Chief Operating Officer Role

- Oversees and directs all ancillary services:
  - Ensures staffing levels are appropriate
  - Ensures competency of all ancillary staff
  - Ensures clinical professionals are certified/licensed
- Oversees the development and implementation of operational policies, procedures, and standards relating to the ancillary departments
- Ensures a safe, comfortable, and clean physical environment
- Oversees Emergency Management, Safety, and Environment of Care Committees

# Questions?



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

May 18, 2016

**SUBJECT: Proposal to adopt Policies and Operational Plans for the Kern County Hospital Authority for all ancillary and support service departments presented by the Chief Operating Officer.**

**Recommended Action: Approve Policies**

**Summary:**

The Chief Operating Officer oversees the ancillary and support service departments. Submitted for your approval are a total of 504 policies and plans for the following areas overseen by the Chief Operating Officer:

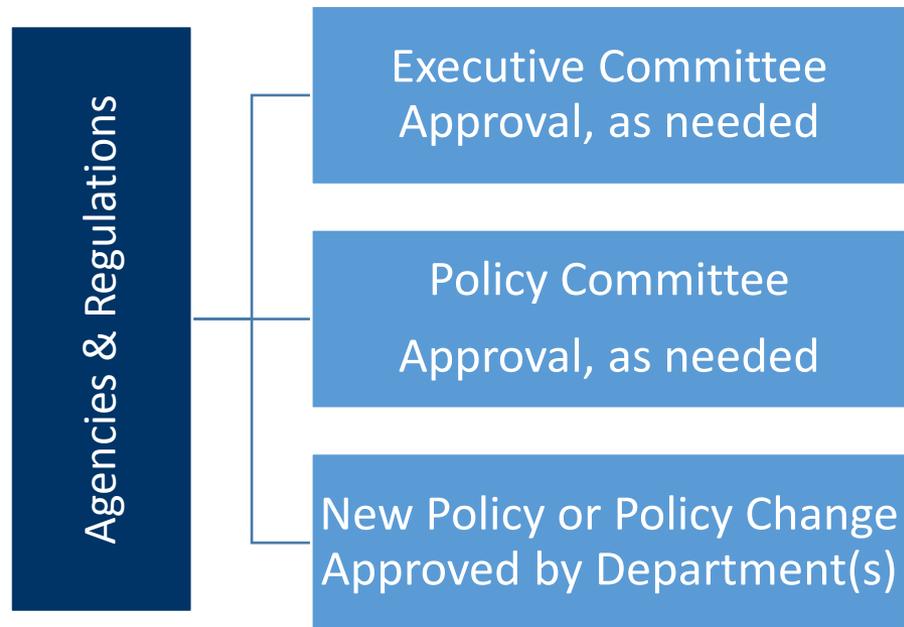
- Construction Services
- Engineering
- Environmental Services
- Food & Nutrition Services
- Laboratory
- Physical Therapy
- Radiology
- Respiratory Therapy
- Security



## **Chief Operating Officer Departmental Policy Overview**

Kern County Hospital Authority Board of Governors  
May 18, 2016

# Policy Development & Approval



# Agencies and Regulations

- California Department of Public Health
- Centers for Medicaid & Medicare Services
- The Joint Commission
- Office of Statewide Health Planning & Development
- California Respiratory Care Board
- National Board for Respiratory Care
- California Occupational Safety and Health Administration
- State Water Resources Control Board
- City/County Building Inspection Department
- San Joaquin Valley Air Pollution Control District
- California Environmental Quality Act
- Food and Drug Administration
- Mammography Quality Standards Act
- American College of Radiology
- Titles 22/24 California Code of Regulations
- Department of Industrial Relations
- California State Controller's Office (public contract code/CUPCCAA)
- College of American Pathologists
- City/County Fire Department
- Federal Aviation Administration
- Board of Equalization
- Americans with Disabilities Act
- California/Federal Environmental Protection Agency
- Association for the Advancement of Medical Instrumentation
- American College of Surgeons
- Physical Therapy Board of California
- Office of the Inspector General
- Speech-Language Pathology & Hearing Aid Dispensers Board
- Department of Toxic Substances Control

<b>Provision of Care, Treatment and Services</b>	<b>Medication Management</b>	<b>Infection Control</b>
<ul style="list-style-type: none"> <li>Assessing Needs</li> <li>Treatment Planning</li> <li>Providing &amp; Coordinating Care</li> </ul>	<ul style="list-style-type: none"> <li>Development of a safe and effective medication management system</li> </ul>	<ul style="list-style-type: none"> <li>Systematic infection prevention and control</li> </ul>
<b>Individual Rights and Responsibilities</b>	<b>Environment of Care</b>	<b>Waived Testing</b>
<ul style="list-style-type: none"> <li>Recognizing patients' rights and informing them of their responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>Promote a safe, functional, and supportive environment to preserve quality and safety</li> </ul>	<ul style="list-style-type: none"> <li>Testing at the bedside used for care decisions</li> </ul>
<b>Information Management</b>	<b>Leadership</b>	<b>Performance Improvement</b>
<ul style="list-style-type: none"> <li>Accurate capture of health information generated by the delivery of care, treatment, and services</li> </ul>	<ul style="list-style-type: none"> <li>Planning and provision of services, resource management, staff competence, and employee engagement</li> </ul>	<ul style="list-style-type: none"> <li>Using data to track and trend for improvement opportunities</li> </ul>

Policy Organization	Number of Policies
Provision of Care, Treatment and Services	455
Medication Management	1
Infection Control	27
Individual Rights and Responsibilities	0
Environment of Care	47
Waived Testing	8
Information Management	45
Leadership	32
Performance Improvement	22
Human Resources	19

# Questions?



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

May 18, 2016

**SUBJECT: Presentation by Kern Medical's Interim Vice President of Administrative Services**

**Recommended Action: Hear Presentation; Receive and File.**

**Summary:**

**The Interim Vice President of Administrative Services will present a departmental overview, including a description responsibilities and current initiatives.**



Interim Vice President of Administrative Services  
Departmental Overview

Kern Medical Board of Governors  
May 18, 2016

# Administrative Services

- Hospital Authority
- Medi-Cal Waiver
  - PRIME
  - Global Payment Program
  - Whole Person Care

# Public Hospital Redesign & Incentives in Medi-Cal Program (PRIME)

- Aims to transform care to improve the quality and value of care
- Program is data-driven, and success is measured by metric attainment
- Kern Medical has committed to implementing 9 PRIME Initiatives
  - 6 required, 3 optional

# PRIME Projects

- Integration of Behavioral Health and Primary Care
- Ambulatory Care Redesign: Primary Care
- Ambulatory Care Redesign: Specialty Care
- Patient Safety in the Ambulatory Setting

# PRIME Projects cont.

- Improvements in Perinatal Care
- Care Transitions: Integration of Post-Acute Care
- Complex Care Management for High Risk Medical Populations
- Transition to Integrated Care: Post Incarceration
- Resource Stewardship: High Cost Imaging

# PRIME Funds Available

- Year 1 - \$31,707,093
- Year 2 - \$31,707,093
- Year 3 - \$31,707,093
- Year 4 - \$28,536,384
- Year 5 - \$24,255,926
  
- Total – \$147,913,590

# Global Payment Program (GPP)

- Streamlines funding sources for care for the uninsured
- Success is measured by number services provided. Each service is assigned a point value. Each year point values will change, pushing towards non-traditional, more efficient methods of care delivery
- Kern Medical Wellness Program

# Kern Medical Wellness Program

- Allows Kern Medical to be proactive in managing the care of the uninsured
- Services are limited to Kern Medical facilities
- Individuals are enrolled in the Wellness Program only after we have determined that there is no other funding source available
- Regularly review members for alternative sources of funding

# GPP Funds Available

- Year 1 - \$28,120,804
- Year 2 - \$26,236,386
- Year 3 - \$21,714,896
- Year 4 - \$19,114,360
- Year 5 - \$17,699,931
  
- Total – \$112,886,377

# Whole Person Care Pilot (WPC)

- Whole Person Care focuses on the coordination of health, behavioral health, and social services
- The goal is to improve beneficiary health and well-being through a more efficient and effective use of services



# WPC Plan

- Data sharing and collaboration
- Increased communication across organizations
- Patient specific plans of care
- Non-traditional services

# WPC Partners

- Kern County Mental Health
- Kern Health Systems
- Sheriff
- Department of Public Health
- Department of Human Services
- Probation
- Plans to include other Community Based Organizations

# WPC Funds Available

- The entire program will fund \$1.5 billion over 5 years. No single pilot will receive more than 30% of total statewide funds
- Funding will be based on our application and requested budget
- We are currently establishing a budget for the application due July 1
- Accepted projects notified October 24
- Program begins January 1, 2017

# Questions?



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

May 18, 2016

**SUBJECT: Agreement with the County of Kern for an Exchange of Services with the Coroner's Office.**

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

Kern Medical requires the utilization of certain services the Kern County Coroner's Office provide, including use of the Coroner space and equipment for performance of autopsies and storage of decedents. The Coroner requires the utilization of radiological imaging, which Kern Medical provides. This agreement provides for the above-mentioned mutual services.

**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority - County of Kern)**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2016, between the KERN COUNTY HOSPITAL AUTHORITY, a county hospital authority which owns and operates Kern Medical Center (“**Authority**”) and the COUNTY OF KERN, a political subdivision of the state of California, (“**County**”) which contains the constituent department of the Kern County Sheriff’s Office – Coroner Section (“**Coroner**”) (each a “**Party**” and collectively the “**Parties**”).

**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) County is authorized, pursuant to Government Code sections 31000 and 53060, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and
- (c) Both Authority and County requires the assistance of the other Party to provide services, as such services are unavailable from Authority and County resources, and the Parties agree to provide such services on the terms and conditions set forth in this Agreement;

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 on the transfer of Kern Medical Center to the Authority, which is scheduled to occur on or about July 1, 2016 (the “**Effective Date**”), and shall end June 30, 2018, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Authority.**

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

2.2 **Representations.** Authority makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Authority has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Authority does not

have any actual or potential interests adverse to County; and (iii) Authority 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. County has relied upon the professional ability and training of Authority as a material inducement to enter into this Agreement. Authority 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 Authority's work by County shall not operate as a waiver or release.

### 3. Obligations of County.

3.1 Specified Services. County shall perform the services set forth in **Exhibit "B,"** attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

3.2 Representations. County makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) County has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) County does not have any actual or potential interests adverse to Authority; and (iii) County shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

3.3 Standard of Care. Authority has relied upon the professional ability and training of County as a material inducement to enter into this Agreement. County 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 County's work by Authority shall not operate as a waiver or release.

3.4 Control Retained in Kern Medical Center ("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. County 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 Fees and Charges. As consideration for the services provided by Parties hereunder, the Parties will pay in accordance with the fee schedule set forth in **Exhibit "C,"** attached hereto and incorporated herein by this reference. All services are payable in arrears.

4.2 Taxes. Parties agree 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.

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

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, Authority and County 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 the Parties provided under this Agreement. The Parties further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **Assignment.** The Parties shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the written consent of the other Party. The Parties shall not assign any money due or which becomes due to a Party under this Agreement without the prior written approval of the other Party.

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

8. **Authority to Bind.** It is understood that neither Party, in its performance of any and all duties under this Agreement, has no authority to bind the other Party to any agreements or undertakings.

9. **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.

10. **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.

11. **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.

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

13. **Compliance Program.** During the term of this Agreement, the Parties shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third-party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for the Parties' assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline the Parties' assigned personnel who violate the Parties' policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with the Parties. The Parties' assigned personnel shall demonstrate the existence of an internal compliance program or plan.

14. **Confidentiality.**

14.1 Each Party recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to the other hereunder, it may have access to certain information of the other Party that constitutes a trade secret or is otherwise confidential and constitutes valuable, special, and unique property. Each Party acknowledges their mutual confidential relationship and each Party's respective ownership of all proprietary and confidential information not generally available to the public or legally accessible from third parties relating to the respective businesses of the Parties, including without limitation, business plans, marketing plans, statistical data and reports, pricing, reimbursement and other financial information relating to a Party's ongoing business, treatment methods, and all quality assurance and utilization review information (the foregoing is collectively referred to as "Confidential Information"). Notwithstanding the foregoing, Confidential Information will not include information: (i) rightfully in the public domain or which hereafter becomes a part of the public domain (other than through a breach of this Agreement); (ii) required to be disclosed by law; (iii) that is independently developed by the non-disclosing Party; or (iv) that was learned by the non-disclosing Party from a third party who did not impose a confidentiality obligation on such Party. Each Party hereto acknowledges and agrees that the receiving Party may be provided access to Confidential Information solely to enable the Parties to perform services as provided for or contemplated in this Agreement. Except as otherwise required by applicable law, each Party agrees to hold the other Party's Confidential Information in

strictest confidence and not to disclose it or allow it to be disclosed directly or indirectly to any person or entity (other than persons employed or engaged by the recipient Party who have a need to know such information and who are obligated by written agreement to maintain the confidentiality thereof) without the other Party's prior written consent.

14.2 **Medical Records.** If applicable, 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.

14.3 **Protected Health Information.** The Parties will comply with all federal and state laws governing the privacy, confidentiality and security of protected health information and medical information including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and implementing regulations ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder (the "**HITECH Act**"), 42 CFR Part 2, and applicable California privacy, confidentiality and security laws and regulations, all as amended from time to time. The Parties agree to consult and cooperate with one another to assure appropriate and consistent handling of protected health information and medical information. The provisions of this paragraph shall survive termination of this Agreement. The Authority also agrees to abide by the terms of the HIPAA Business Associate Agreement attached hereto as **Exhibit "D,"** attached hereto and incorporated herein by this reference.

15. **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.

16. **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. Authority and County 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. Authority and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

17. **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.

18. **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.

19. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to the Parties 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.

20. **Indemnification and Hold Harmless.** The Parties agree to indemnify, defend and hold harmless the other Party and its agents, board members, elected and appointed officials and officers, employees, 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 County Counsel and counsel retained by the Party, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of the other Party or its officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. 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; and any workers’ compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of the Party by any person or entity.

21. **Independent Contractor.** In the performance of the services under this Agreement, the Parties shall be, and acknowledges that the other Party is in fact and law, an independent contractor and not an agent or employee of the other Party. Each Party has and retains the right to exercise full supervision and control over the manner and methods of providing services to the other Party under this Agreement. Each Party retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting the Party in the provision of services under this Agreement. With respect to a Party’s employees, if any, the Party 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.

22. **Insurance.** County and Authority self-insure as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Any self-insuring Party, upon request of the other Party, shall forward documentation to the requesting Party that demonstrates to the requesting Party's satisfaction that the Party self-insures as a matter of normal business practice before commencing the Work. Either Party will accept reasonable proof of self-insurance comparable to the above requirements.



Attn.: Chief Executive Officer

30. **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.

31. **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.

32. **Termination.**

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

32.3 **Immediate Termination.** Notwithstanding the foregoing, the Parties shall have the right to terminate this Agreement effective immediately after giving written notice to the other Party, for any of the following reasons: (i) a Party determines that the other Party does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by the other Party in the providing of services may result in civil, criminal, or monetary penalties against the Party; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which the Party is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by the other Party which causes material harm to the Party; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by the other Party against the Party; (vi) the loss or threatened loss of the Party's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of the other Party; or (vii) the failure of a Party to cure a default within the time allowed in section 32.1.

33. **Effect of Termination.**

33.1 **Payment Obligations.** In the event of termination of this Agreement for any reason, the terminating Party shall have no further obligation to pay for any services rendered or expenses incurred by the other Party after the effective date of the termination, and the other Party shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

34. **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.

35. **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.

**[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.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Supervisors

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
Kern County Sheriff's Office – Coroner Section

APPROVED AS TO CONTENT:  
Kern Medical Center

By \_\_\_\_\_  
Donny Youngblood  
Sheriff - Coroner

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
Office of County Counsel

APPROVED AS TO FORM:  
Office of County Counsel

By \_\_\_\_\_  
Deputy

By \_\_\_\_\_  
Deputy

**EXHIBIT “A”**  
**Description of Authority Services**

1. Complete X-Ray Bone Survey (Radiological Imaging) –
  - a. Coroner will contact Kern Medical Radiology Department when radiological imaging is needed. Full body radiological imaging is required for all homicide and infant cases.
  - b. At an agreed upon timing and preferably during low patient volume times, like evenings, nights, and weekends, Coroner personnel will transport decedent in a sealed bag for radiological imaging. Imaging is to be accomplished within 24 hours of the request. The service will be available on a 24 hours/day 7 days/week basis.
  - c. Technologist will perform the image as requested.
  - d. Within 24 hours of completed imaging, Coroner staff can pick up at the hospital a copy of the images, either on compact disc, or by another agreed upon method, for review by Coroner Forensic Pathologist. If time permits, the images will be sent with Coroner personnel at the time of completion of imaging.
  - e. The images will be archived in the PACs system.
  - f. Kern Medical will send an invoice to the Coroner’s Office following completion of the radiological imaging.

**EXHIBIT “B”**  
**Description of County Services**

1. Transport of Kern Medical-Responsible Decedents –
  - a. Coroner’s Office will provide refrigerated morgue storage for certain in-patient deaths that occur at Kern Medical.
  - b. Kern Medical staff will contact Coroner transport services directly when a death has occurred.
  - c. Kern Medical will provide Coroner transport the following information:
    - i. Location of deceased in-patient in hospital.
    - ii. Name of deceased in-patient.
    - iii. Point of Contact at location of deceased in-patient
    - iv. Face Sheet of deceased in-patient
    - v. Notification to Coroner transport services of any contagious diseases
  - d. Coroner transport will remove the deceased in-patient from Kern Medical to the Coroner morgue facility.
  - e. Coroner will send an invoice to the Kern Medical nurse staffing office upon successful transfer of decedent.
2. Coroner storage of Kern Medical-Responsible Decedents –
  - a. Coroner will maintain the deceased in-patient in the Coroner refrigerated morgue facility until the next-of-kin selects a mortuary.
  - b. Kern Medical will obtain an authorized release by the next-of-kin for the designated mortuary. Designated mortuary will present authorized release obtained from Kern Medical to Coroner at time of removal from Coroner morgue facility.
  - c. Kern Medical will be responsible for monitoring abandoned in-patients housed at the Coroner morgue facility and will report abandonments to the Coroner.
  - d. Kern Medical will be responsible for notifying the Coroner about the death of any deceased in-patient in which family is unknown and/or emergency contact is a non-family member and no known health care directive is in place.
  - e. Coroner will send a monthly invoice to the Kern Medical nurse staffing office for storage of Kern Medical-Responsible decedents.
3. Use of Coroner’s Space for Kern Medical-Performed Autopsy –
  - a. Upon request, Coroner’s Office will assist Kern Medical in completion of an autopsy when an in-patient dies and the attending physician is requesting more specific information related to the demise. The following guidelines shall apply:
    - i. Kern Medical physician must be willing and able to provide a cause of death. The death shall not fall under Coroner jurisdiction.
    - ii. Kern Medical pathologist will contact Coroner Manager and request a time/date to complete the autopsy. A date will be scheduled within 3 days of request.

- iii. Kern Medical autopsies will be scheduled at the conclusion of Coroner autopsies for the day, but will be scheduled during business hours Monday-Friday between 0800-1700 hours.
- iv. Coroner will provide all equipment necessary for completion of the autopsy. Coroner will provide all Personal Protective Equipment (PPE) necessary for completion of the autopsy by Kern Medical pathologist.
- v. Coroner will provide the assistance of one (1) autopsy assistant to assist the Kern Medical pathologist in completion of the autopsy. Depending on availability and skill level, the assistant may or may not be able to eviscerate organs for the Kern Medical pathologist. However, the assistant is able to remove skull caps and complete sewing of the body upon completion.
- vi. Coroner autopsy assistant will assist Kern Medical pathologist in preserving any tissue as directed by pathologist.
- vii. Coroner will send an invoice to Kern Medical administration at the conclusion of each case.

**EXHIBIT “C”  
Fee Schedule**

<u>Title:</u>	<u>Rate:</u>
1. Complete X-Ray Bone Survey (Radiological Imaging)	\$118.89 (or current Medicare Rate*)
2. Transport of Kern Medical-Responsible Persons	Not to Exceed \$160
3. Coroner Storage of Kern Medical-Responsible Persons	\$10 per day after first 24 hours
4. Use of Coroner’s Space for Kern Medical-Performed Autopsy	\$200 per case

**\*60-day notice to be provided to Coroner prior to any Medicare rate increases**

**EXHIBIT “D”  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and Kern County Sheriff’s Department – Coroner (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of \_\_\_\_\_ (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, Covered Entity is a “Covered Entity” as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, (“**HIPAA**”), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 (“**HIPAA Rules**”);

**WHEREAS**, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information (“**PHI**”);

**WHEREAS**, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the “**HITECH Act**”) and its implementing regulations and guidance issued by the Secretary; and

**WHEREAS**, the Privacy and Security Rules (defined below) require Covered Entity and Business Associate to enter into a BAA that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

**DEFINITIONS**

“**Breach**” shall have the meaning given under [45 C.F.R. § 164.402](#).

“**Breach Notification Rule**” shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

“**Designated Record Set**” shall have the meaning given such term under [45 C.F.R. § 164.501](#).

“**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

“**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

“**Protected Health Information**” and “**PHI**” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

“**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

“**Security Rule**” shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.

“**Services**” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the “**Underlying Agreement**”), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in [45 C.F.R. § 160.103](#).

“**Subcontractor**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

“**Unsecured PHI**” shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

“**Use**” or “**Uses**” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

“**Workforce**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#)

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA or the HITECH Act, as applicable.

## **OBLIGATIONS OF BUSINESS ASSOCIATE**

Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as

Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity.

Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

Reporting Non-Permitted Use or Disclosure.

Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the

Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. § 164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

Use of Subcontractors. Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

Accounting. Within thirty (30) days of receipt of a request from Covered Entity or an Individual for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within five (5) days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

Delegated Responsibilities. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limits its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

## **OBLIGATIONS OF COVERED ENTITY**

### Covered Entity's Obligations.

Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.

Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

## **TERM AND TERMINATION**

Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

### Termination of Underlying Agreement.

A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon thirty (30) calendar days written notice to Business Associate; or

Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

#### Disposition of Protected Health Information Upon Termination or Expiration.

Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.

If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

### **MISCELLANEOUS**

Regulatory References. A reference in this BAA to a section or other part of HIPAA, the HIPAA Rules, or the HITECH Act means, as of any point in time, the section or part as it may be amended or in effect at such time.

Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.

Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

Headings. The headings of the paragraphs and sections of this BAA are inserted solely for convenience of reference and are not a part or intended to govern, limit or aid in the construction of any term or provision hereof.

Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Business Associate self-insures as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Business Associate, upon request of Covered Entity, shall forward documentation that demonstrates that Business Associate self-insures as a matter of normal business practice before commencing the Work.

Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security.

Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or

subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Kern County Sheriff's Office  
P.O. Box 2208  
Bakersfield, California 93303-2208  
Attn: Public Services Division

Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Business Associate obligations under this BAA.

Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.10 of this BAA shall survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

Interpretation. Any ambiguity in this BAA shall be interpreted to permit the Parties to comply with HIPAA, the HITECH Act, and the HIPAA Rules.

Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state. Any dispute between the Parties shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.

Assignment and Delegation. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.

Disclaimer. Neither Party represents or warrants that compliance by the other Party with this BAA, HIPAA, the HIPAA Rules, or the HITECH Act will be adequate or satisfactory for the other Party's own purposes. Each Party is solely responsible for its own decisions regarding the safeguarding of PHI.

Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

The Parties hereto have executed this BAA as of the Effective Date.

**COVERED ENTITY:**

The Kern County Hospital Authority on behalf of Kern Medical Center

**BUSINESS ASSOCIATE:**

Kern County Sheriff's Department – Coroner Section

\_\_\_\_\_  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

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



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

May 18, 2016

**SUBJECT: Transition Services Agreement**

**Recommended Action: Approve; Authorize Chairman to sign. Designate Chief Executive Officer or Designee as Authority Contracting Officer.**

Pursuant to the Master Transfer Agreement, the Kern County Hospital Authority (Authority) desires to enter into an agreement with the County of Kern (County), through which the County shall provide the Authority transitional services. As County currently performs a number of services on behalf of Kern Medical, these services will allow Authority a period of time during which the operation of these services can be transferred to the authority, other outside vendors, or remain with County as needed which otherwise would not have been feasible.

Consideration for services has been negotiated by respective department administrators, and to the extent feasible, will be limited to a cost reimbursement arrangement. Either party has the right to terminate this agreement, or any specific service, without cause upon 120 days' written notice.

The County will provide the administrative services including but not limited to the following:

- Banking services through the Treasury-Tax Collector's Office.
- Vendor payments, Sales Tax review and audit, form 1099-Misc reporting and limited budgetary controls through the Auditor-Controller-County Clerk's Office.
- Payroll services, including payroll processing, review of special pay allowances, deductions maintenance, payroll taxes reporting, processing of Section 415 Replacement Pension payments, and assistance with the State Controller's Compensation Report.
- Fleet management and maintenance services and construction administration services provided by the County General Services Division.
- Information Technology Services will continue to provide similar services as currently provided until the Hospital Authority is able to secure those services on its own, and
- The County Administrative Office will make available the Information Security Officer on a part-time basis not to exceed 48 hours per pay period through September 30, 2016.

The proposed agreement provides for a single administrator designated by the Board of Governor's to take the necessary actions to implement the agreement. It is recommended that your Board designate the Chief Executive Officer or his designee as the Contracting Officer.

**TRANSITION SERVICES AGREEMENT**

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**BY AND BETWEEN**  
**THE COUNTY OF KERN**  
**AND**  
**KERN COUNTY HOSPITAL AUTHORITY**

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\_\_\_\_\_, 2016

## TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (this “Agreement”), dated as of \_\_\_\_\_, 2016, is entered into by and between the County of Kern (“County”) and the Kern County Hospital Authority (the “Authority”). County and the Authority are referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

A. WHEREAS, County and the Authority are parties to that certain Master Contract for the Transfer of Health Facilities dated \_\_\_\_\_, 2016 (the “Master Contract”), pursuant to which County is transferring the Kern Medical Center, retail pharmacies, and certain outpatient clinics (collectively, along with related administrative support services, the “Health Facilities”) to the Authority. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Master Contract.

B. WHEREAS, under the terms of the Master Contract, County has agreed to provide, and the Authority has agreed to purchase, certain services and assistance to facilitate the transition of the Health Facilities to the Authority.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, agreements, representations, and warranties contained herein, and for other good and valuable consideration, County and the Authority hereby agree as follows:

1. Transition Services.

1.1 Scope of Services. During the term hereof, County shall provide to the Authority only the services listed and described in **Exhibit A** attached hereto and incorporated in this Agreement by this reference, and shall access those employees of Authority as are reasonably necessary for County to provide such services (each, a “Transition Service,” and collectively, the “Transition Services”). County shall assign such personnel to perform the Transition Services as County determines are reasonably necessary to render the Transition Services in accordance with the terms of this Agreement (collectively, the “Personnel”). County shall exercise reasonable care and business judgment in providing the Transition Services and shall otherwise perform the Transition Services to the same standards of timeliness and quality as County would apply to the performance of similar work for County.

1.2 Good Faith Negotiations. County and the Authority shall negotiate in good faith any changes in the types and quantities of Transition Services. Any such changes shall be incorporated into this Agreement by way of amendments in accordance with Section 19.

2. Term. This Agreement shall commence on the Closing and shall continue for a one (1) year term (“Term”), unless terminated earlier pursuant to Section 5 below. The Term shall automatically renew for successive one (1) year periods unless terminated by either Party by written notice to the other Party at least one hundred twenty (120) days prior to its next

termination date. Without limiting the foregoing, the Parties may agree to terminate specific Transition Services in accordance with Section 6.

3. Consideration.

3.1 Fees for Transition Services. Authority agrees to pay County the amounts indicated in **Exhibit A** for each of the Transition Services. To the extent that the Parties do not reach an agreement regarding the fees for a particular Transition Service, such Transition Service shall not be provided.

3.2 Invoices. Invoices for payment shall be submitted in a form approved by the Authority and shall list each Transition Service rendered as set forth on **Exhibit A**. Invoices shall be sent to the Authority for review and processing or payment will not be made. Payment will be made to County within 30 days of receipt and approval of each invoice by the Authority.

3.3 Other Charges. In the event County incurs additional charges and expenses not set forth on **Exhibit A** in connection with the provision of Transition Services hereunder or is otherwise tasked with the request of providing additional and/or supplemental services to Authority that are not contemplated or specified herein, the Parties agree to reasonably negotiate in good faith to allocate additional applicable fees and/or charges to be paid by the Authority to County in connection with any such unanticipated charges, expenses and/or supplemental services. To the extent practicable, the Parties shall agree on such additional applicable fees and/or charges in advance of such fees and charges being incurred by County.

4. Contracting Officers – Delegation of Authority

4.1 County shall administer this Agreement through a single administrator (County Contracting Officer) designated by the County Board of Supervisors. The person so designated shall take all actions necessary to implement this Agreement, subject to the limitations of California laws and state administrative regulations. No person other than the County Contracting Officer or the Board of Supervisors shall have the power to bind County relative to the rights and duties of County and the Authority under this Agreement, nor shall any other person be considered to have the delegated authority of the County Contracting Officer or to be acting on his or her behalf unless the County Contracting Officer has expressly stated in writing that person is acting as his or her authorized agent.

4.2 The Authority shall administer this Agreement through a single administrator (Authority Contracting Officer) designated by the Authority Board of Governors. The person so designated shall take all actions necessary to implement this Agreement, subject to the limitations of California laws and state administrative regulations. No person other than the Authority Contracting Officer or the Board of Governors shall have the power to bind the Authority relative to the rights and duties of County and the Authority under this Agreement, nor shall any other person be considered to have the delegated authority of the Authority Contracting Officer or to be acting on his or her behalf unless the Authority Contracting Officer has expressly stated in writing that person is acting as his or her authorized agent.

5. Termination of Agreement. This Agreement shall terminate upon the occurrence of one of the following acts or events:

5.1 the mutual written consent of the Parties hereto;

5.2 by either Party upon breach by the other Party of any material provision of this Agreement, provided that such breach continues for twenty (20) business days after receipt by the breaching Party of written notice of such breach by the non-breaching Party;

5.3 by either Party, without cause, upon 120 days' prior written notice to the other Party.

6. Termination of Specific Transition Service. Notwithstanding any other provision of this Agreement, either Party may terminate a specific Transition Service upon 120 days' prior written notice to the other Party. The remaining Transition Services shall continue to remain in effect. The Authority shall pay County for all accrued fees associated with such terminated Transition Service as of the termination date for such Transition Service.

## 7. Compliance

7.1 Compliance with Laws. Each Party shall act hereunder in compliance in all material respects with all applicable standards set forth by law or ordinance or established by the rules and regulations of any federal, state or local agency, department, commission, association or other pertinent governing, accrediting, or advisory body having authority to set standards for health care facilities, including the Joint Commission and the Medicare/Medicaid conditions of participation and any amendments thereto to the extent applicable. The Parties agree to comply with all applicable laws, rules and regulations, including but not limited to, those laws prohibiting payment for referrals. Accordingly, the Parties agree that it is not a purpose of this Agreement to generate referrals for services or supplies for which payment may be made in whole or in part under any federal healthcare program.

7.2 HIPAA. Each Party shall maintain all patient information as confidential and shall use or disclose such patient information only in accordance with the requirements of state and federal law. Each Party agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any current and future regulations promulgated thereunder, including the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements." In furtherance of the foregoing, the Parties hereby agree to comply with the terms of that certain Business Associate Agreement ("BAA") attached hereto and incorporated herein as **Exhibit B**, which shall apply to this Agreement. If there is a conflict between the terms of this Agreement and the terms of the BAA, the terms of the BAA shall control.

7.3 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.

7.4 Access to Books and Records. If applicable, the Parties agree to make books and records available and to require any subcontractor to make books and records available, upon request of the Secretary of the U.S. Department of Health and Human Services or the Comptroller General of the United States or their duly authorized representatives for up to four (4) years following the furnishing of goods or services under this Agreement pursuant to Section 1861(v)(1)(I) of the Social Security Act.

7.5 Exclusion From Governmental Programs. Each Party represents and warrants that neither it nor any of its directors or officers, and to the best of its knowledge, its employees and agents, have been convicted of a criminal offense related to health care, debarred, suspended, declared ineligible, or excluded from participating with Medicare, Medicaid or any other plan or program that provides health benefits, whether directly through insurance or otherwise, which is funded directly, in whole or in part, by the United States Government or any State health care program. This shall be an ongoing representation and warranty during the Term, and each Party shall notify the other of any change in the status of the representations set forth in this Section. A Party may terminate this Agreement immediately upon the occurrence or notification of any of the above.

## 8. Indemnification

### 8.1 Indemnification by the Authority

(a) The Authority, from and after the date of this Agreement, shall indemnify, protect, defend, reimburse, and hold harmless the County and its supervisors, officials, directors, managers, officers, employees, agents, successors and assigns (each such person a "County Indemnified Person") from and against any claim or demand by a third party asserted against a County Indemnified Person, and any loss, cost, or expense incurred or suffered by a County Indemnified Person on account thereof directly or indirectly, as a result of or arising from the following, except to the extent the same is attributable solely to the County's negligent acts taken in connection with the provision of Transition Services under this Agreement:

(1) the ownership or operation of the Health Facilities by the Authority after the date hereof, or the performance by the Authority, its

agents, contractors, or assigns in performing the Authority's obligations under this Agreement;

(2) any breach or the nonfulfillment of any covenant, agreement or other obligation of the Authority set forth in this Agreement;

(3) any liabilities or obligations arising out of or in connection with any claims, litigation or proceedings related to the Health Facilities or the Authority's operation thereof for acts or omissions which allegedly occurred after the date hereof;

(4) any and all liabilities of the Authority of any kind or nature, whenever arising, whether known or unknown, fixed or contingent, recorded or unrecorded, arising out of or in any manner related to the ownership, use or operation of the Health Facilities; or

(5) penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by the Authority of any legal requirement, but only to the extent that such violation is directly caused by a condition that is subject to indemnification under this Agreement.

## 8.2 Indemnification by County

(a) The County, from and after the date of this Agreement, shall indemnify, protect, defend, reimburse and hold harmless the Authority and its governors, officials, directors, managers, officers, employees, agents, successors and assigns (each such person an "Authority Indemnified Person") from and against any claim by a third party asserted against an Authority Indemnified Person, and any loss, cost, or expense incurred or suffered by an Authority Indemnified Person on account thereof, directly or indirectly, as a result of or arising from the following:

(1) any breach or the nonfulfillment of any covenant, agreement or other obligation of the County set forth in this Agreement or in the performance, or failure to perform, of any of the Transition Services to be performed by the County pursuant hereto; or

(2) penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by the County of any legal requirement, but only to the extent that such violation is directly caused by a condition that is subject to indemnification under this Agreement.

## 8.3 Notice and Claims

(a) All claims for indemnification by a party seeking indemnification hereunder (the “Indemnified Party”) against another party (the “Indemnifying Party”) shall be asserted and resolved as follows:

(1) If any claim or demand (“Claim”) is alleged or asserted by a third person against a party who believes he/she or it is entitled to indemnification hereunder with respect to such claim or demand (the “Indemnified Party”), the Indemnified Party shall deliver a notice (the “Claim Notice”) with reasonable promptness to the party whom the Indemnified Party believes owes the indemnification obligation (the “Indemnifying Party”), together with a copy of all papers served, if any, and specifying the nature of and alleged basis for the Claim and, to the extent then feasible, the alleged amount or the estimated amount of the Claim. If the Indemnified Party fails to deliver the Claim Notice to the Indemnifying Party within 30 days after the Indemnified Party receives notice of such Claim, the Indemnifying Party shall not be obligated to indemnify the Indemnified Party with respect to such Claim to the extent that the Indemnifying Party’s ability to defend the Claim has been irreparably prejudiced by such failure. The Indemnifying Party shall notify the Indemnified Party within 10 days after receipt of the Claim Notice (the “Notice Period”) whether the Indemnifying Party intends, at the sole cost and expense of the Indemnifying Party, to defend the Indemnified Party against the Claim.

(a) If the Indemnifying Party notifies the Indemnified Party within the Notice Period that the Indemnifying Party intends to defend the Indemnified Party against the Claim, then the Indemnifying Party shall have the right to defend, at its sole cost and expense, the Claim with counsel acceptable to County by all appropriate proceedings, which proceedings shall be diligently prosecuted by the Indemnifying Party to a final conclusion or settled at the discretion of the Indemnifying Party (with the consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed if the settlement includes a full release of all claims against the Indemnified Party and does not require any ongoing activity by the Indemnified Party). The Indemnifying Party shall have full control of such defense and proceedings; provided that the Indemnified Party may file during the Notice Period, at the sole cost and expense of the Indemnified Party, any motion, answer or other pleading that the Indemnified Party may deem necessary or appropriate to protect its interests and is not irrevocably prejudicial to the Indemnifying Party (it being understood and agreed that, except as provided in this Section 8.3 if an Indemnified Party takes any such action that is irrevocably prejudicial and conclusively causes a final adjudication that is materially adverse to the Indemnifying Party, the Indemnifying

Party shall be relieved of its obligations hereunder with respect to that portion of the Claim prejudiced by the Indemnified Party's action); and provided further that, if requested by the Indemnifying Party, the Indemnified Party shall cooperate, at the sole cost and expense of the Indemnifying Party, with the Indemnifying Party and its counsel in contesting any Claim that the Indemnifying Party elects to contest or, if appropriate in the judgment of the Indemnified Party and related to the Claim, in making any counterclaim or cross-claim against any Person (other than the Indemnified Party). The Indemnified Party may participate in, but not control, any defense or settlement of any Claim assumed by the Indemnifying Party pursuant to this Section 8.3, and, except as provided in the preceding sentence, the Indemnified Party shall bear its own costs and expenses with respect to such participation. Notwithstanding the foregoing, the Indemnifying Party may not assume the defense of the Claim if (1) the persons against whom the claim is made, or any impleaded persons, include both the Indemnifying Party and any Indemnified Party, and (2) representation of both such persons by the same counsel would be inappropriate due to actual or potential differing interests between them, in which case any Indemnified Party shall have the right to defend the Claim and to employ counsel at the expense of the Indemnifying Party.

(b) If the Indemnifying Party fails to notify the Indemnified Party within the Notice Period that the Indemnifying Party intends to defend the Indemnified Party against the Claim, or if the Indemnifying Party gives such notice but fails to diligently prosecute or settle the Claim, or if the Indemnifying Party fails to give any notice whatsoever within the Notice Period, then the Indemnified Party shall have the right (but not the obligation) to defend, at the sole cost and expense of the Indemnifying Party, the Claim by all appropriate proceedings, which proceedings shall be diligently prosecuted by the Indemnified Party to a final conclusion or settled at the discretion of the Indemnified Party. The Indemnified Party shall have full control of such defense and proceedings, including any compromise or settlement thereof, provided that, if requested by the Indemnified Party, the Indemnifying Party shall cooperate, at the sole cost and expense of the Indemnifying Party, with the Indemnified Party and its counsel in contesting the Claim which the Indemnified Party is contesting, or, if appropriate and related to the Claim in question, in making any counterclaim or cross claim against any person (other than the Indemnifying Party).

(c) Notwithstanding the foregoing provisions of Section 8.3, if the Indemnifying Party notifies the Indemnified Party within the Notice Period that the Indemnifying Party disputes its obligation to indemnify the Indemnified Party against the Claim, and if such dispute is resolved pursuant to Section 8.3 in favor of the Indemnifying Party, the Indemnifying Party shall not be required to bear the costs and expenses of the Indemnified Party's defense pursuant to this Section 8.3 or of the Indemnifying Party's participation therein at the Indemnified Party's request, and the Indemnified Party shall reimburse the Indemnifying Party in full for all such costs and expenses. The Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to Section 8.3, but the Indemnifying Party shall bear its own costs and expenses with respect thereto if such participation is not at the request of the Indemnified Party.

8.4 The foregoing indemnification obligations shall survive the expiration or termination of this Agreement.

8.5 The foregoing indemnification obligations shall have no force or effect where precluded by law, but shall be enforceable to the extent not precluded by law.

8.6 Nothing in this Section 8 or elsewhere in this Agreement shall be construed as imposing any personal liability on any elected or appointed officials, managers, directors, officers, employees, agents, successors and assigns of County or the Authority for the acts or omissions of the County or the Authority, respectively, under this Agreement.

9. Disclaimer and Waiver of Warranty. EXCEPT AS SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, WITH RESPECT TO THE TRANSITION SERVICES, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, TIMELINESS, FITNESS FOR A PARTICULAR PURPOSE, OR QUALITY. UNLESS AND EXCEPT AS SPECIFICALLY STATED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, (I) ALL SERVICES ARE PROVIDED "AS IS"; AND (II) COUNTY DOES NOT WARRANT THAT THE TRANSITION SERVICES WILL MEET THE AUTHORITY'S REQUIREMENTS OR THAT THE OPERATION OF THE TRANSITION SERVICES WILL BE ENTIRELY ERROR FREE, FREE FROM VIRUSES, OR UNINTERRUPTED OR FUNCTION PRECISELY AS DESCRIBED IN ANY ACCOMPANYING DOCUMENTATION. IN ADDITION, AND FOR CERTAINTY, EXCEPT AS SET FORTH HEREIN, COUNTY SHALL HAVE NO LIABILITY FOR FAILURE TO PROVIDE TRANSITION SERVICES IF SUCH FAILURE ARISES FROM CAUSES BEYOND COUNTY'S CONTROL.

10. Limitation of Liability. EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER UNDER THIS AGREEMENT (EXCEPT FOR THE PAYMENT OF FEES OWED TO

COUNTY HEREUNDER) FOR ANY ALLEGED DAMAGES ARISING OUT OF, BASED ON, OR RELATING TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, SHALL BE LIMITED TO SAID PARTY'S ACTUAL DAMAGES UP TO THE SUM OF THE TOTAL FEES ACTUALLY PAID TO COUNTY FOR SERVICES PROVIDED BY COUNTY PURSUANT TO THIS AGREEMENT DURING THE MOST RECENT 12-MONTH PERIOD. EXCEPT AS SET FORTH IN SECTION 11 (WAIVER OF CERTAIN SPECIAL DAMAGES), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

11. Waiver of Certain Special Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES, DATA OR USE (EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER. LIABILITY FOR DAMAGES SHALL BE LIMITED AND/OR EXCLUDED AS PROVIDED IN THIS AGREEMENT, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

12. Responsibility for Personnel. County shall have the sole and exclusive responsibility for the Personnel, shall supervise the Personnel and shall cause the Personnel to cooperate with the Authority in performing the Transition Services. County shall pay and be responsible for the payment of any and all wages, salaries and benefits paid to the Personnel and any and all premiums, contributions and taxes for workers' compensation insurance, unemployment compensation, disability insurance and all similar provisions now or hereafter imposed by any federal, state or local governmental authority which are imposed with respect to or measured by wages, salaries or other compensation paid or to be paid by County to the Personnel.

13. No Third Party Beneficiaries. The terms and provisions of this Agreement (including provisions regarding employee and employee benefit matters) are intended solely for the benefit of County and the Authority and their respective successors and permitted assigns, and are not intended to confer third-party beneficiary rights upon any other Person.

14. Notices. All notices, demands or communications required or permitted under this Agreement shall be given in writing and shall be delivered to the Party to whom notice is to be given either (a) by personal delivery (in which cases such notice shall be deemed given on the date of delivery), (b) by next business day courier service (e.g., Federal Express, UPS or other similar service) (in which case such notice shall be deemed given on the business day following date of deposit with the courier service), (c) by United States mail, first class, postage prepaid, registered or certified, return receipt requested (in which case such notice shall be deemed given on the date indicated on the return receipt), or (d) by telecopy or facsimile transmission (in which case such notice shall be deemed given 12 hours after being sent with confirmed answer back), and addressed as follows:

Authority:

Name/address of recipient of notices  
Russell V. Judd  
Chief Executive Office  
Kern County Hospital Authority  
Kern Medical Center  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306

with a copy to:

Attorney for Authority  
Karen S. Barnes, Chief Deputy  
Office of County Counsel  
1115 Truxtun Avenue, 4th Floor  
Bakersfield, CA 93301

County:

Name/address of recipient of notices  
Nancy Lawson  
Assistant County Administrative Officer  
1115 Truxtun Avenue, 5th Floor  
Bakersfield, CA 93301

with a copy to:

Attorney for County  
Theresa A. Goldner, County Counsel  
Office of County Counsel  
1115 Truxtun Avenue, 4th Floor  
Bakersfield, CA 93301

Any Party may change its address or telecopy or facsimile number by giving a written notice to the other Parties in conformity with this Section.

15. Severability. If any provision of this Agreement is held or determined to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of County or the Authority under this Agreement shall not be materially and adversely affected: (a) such provision shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement; and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added

automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

16. 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 Agreement, binding on both of the Parties hereto.

17. Dispute Resolution.

17.1 Any dispute, claim or controversy in any way arising out of or relating to this Agreement, including the scope, interpretation, breach or validity thereof, shall be administered by Judicate West in Kern County, California, pursuant to its Commercial Arbitration Rules and resolved pursuant to this multi-step Dispute Resolution process.

17.2 As a first step, the Parties shall engage in non-binding mediation. The Parties agree to split the fees and costs of the mediation equally. If the Parties cannot agree on a Mediator within fourteen (14) calendar days of requesting mediation, the Mediator shall be selected in the same manner in which an arbitrator is selected (Judicate West Commercial Arbitration Rule 5, et seq.). The mediation shall be completed within sixty (60) days of the selection of the Mediator unless otherwise agreed upon by the Parties in writing. The mediation shall be conducted pursuant to, and governed by, California Evidence Code Sections 1115-1128.

17.3 Should the mediation process fail to resolve any issue(s), the Parties may agree to submit any remaining dispute(s) to binding arbitration. If the Parties agree upon binding arbitration, the arbitration shall be administered in Kern County, California, under Judicate West's Commercial Arbitration Rules in effect at the time of the arbitration. Each Party shall bear the expense of the arbitral proceedings equally unless otherwise agreed upon. Any award of the Arbitrator(s) may be entered as a judgment in any court having jurisdiction.

17.4 If the Parties do not agree on binding arbitration, the dispute may be resolved in court. Any such dispute between the Parties shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

18. Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the Parties hereto. The above notwithstanding, neither Party shall assign this Agreement, or assign any of its rights or delegate any of its obligations hereunder, without the prior written consent of the other Party.

19. Entire Agreement; Modification. This Agreement supersedes all previous contracts, agreements and understandings and constitutes the entire agreement of whatsoever kind or nature existing between or among the Parties representing the within subject matter and no Party shall be entitled to benefits other than those specified in this Agreement. As between or among the Parties, any oral or written representation, agreement or statement not expressly incorporated in this Agreement shall be of no force and effect unless and until made in writing and signed by the Parties on or after the Closing Date. This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together

shall constitute but one and the same instrument. This Agreement may not be amended except in a written instrument executed by the Parties.

20. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to such state's conflicts of laws rules.

21. Jurisdiction and Venue. Any dispute between the parties shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

22. Independent Contractor. The Parties hereto understand and agree that this Agreement does not make either of them an agent or legal representative of the other for any purpose whatsoever. No Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge (i) that County is an independent contractor with respect to the Authority in all respects, including, without limitation, the provision of the Transition Services, and (ii) that the Parties are not partners, joint venturers, employees or agents of or with each other.

23. Intellectual Property. The Authority acknowledges that nothing in this Agreement shall be deemed to constitute a transfer or assignment to the Authority, or the license or right to use by the Authority, of any intellectual property owned or licensed by County that may be used by County or the Personnel in the provision of the Transition Services hereunder. The Authority further acknowledges and agrees that all books, records, data, work product and other documents of County including, without limitation, all software and manuals coming into the possession or control of the Authority and their employees or agents, as a result of or in connection with the performance of the Transition Services, shall be and remain the exclusive property of County, and the Authority shall not at any time, directly or indirectly, assert any interest or property rights therein. Such Intellectual Property (or any part of such) shall not be used by the Authority for any purpose other than as provided in this Agreement in connection with the Transition Services. The Authority shall establish and maintain reasonable precautions against the infringement, destruction or loss of any such materials or the dissemination of any of such materials without the prior consent of County. Upon termination of this Agreement, and without any further action by County, the Authority shall cause all such materials and all copies thereof to be returned to County as soon as reasonably possible following the effective date of termination in such format, electronic or otherwise, as County may reasonably request. In the event of the termination of a portion of the Transition Services, the Authority shall return all such materials and all copies thereof related to the terminated Transition Services (if possible) to County as soon as reasonably possible following the effective date of the termination of such Transition Services in such format, electronic or otherwise, as County may reasonably request.

24. Injunctive Relief. The Authority acknowledges that a breach of any provision of Section 23 by the Authority would cause irreparable damage and substantial prejudice to County. Accordingly, notwithstanding any other provision hereof, the Authority agrees that, in the event of any such breach, County shall have, in addition to its legal and any equitable remedies, the right to injunctive relief, as permitted by law, without posting bond.

25. Remedies Cumulative. The remedies of the Parties hereto shall be cumulative to the extent permitted by law, and may be exercised partially, concurrently or separately. The exercise of one remedy shall not be deemed to preclude the exercise of any other remedy.

26. Non-Waiver. The waiver by any Party of any breach or violation by the other Party of any provision of this Agreement or of any right or remedy permitted, the waiving Party in this Agreement (a) shall not waive or be construed to waive any subsequent breach or violation of the same provision, (b) shall not waive or be construed to waive a breach or violation of any other provision, and (c) shall be in writing and may not be presumed or inferred from any Party's conduct. All remedies, either under this Agreement, or by law or otherwise afforded, shall be cumulative and not alternative.

27. Agreement Drafted by All Parties. No provision of this Agreement shall be interpreted for or against any Person on the basis that such Person was the drafter of such provision, and no presumption or burden of proof shall arise favoring or disfavoring any Person by virtue of the authorship of any provision of this Agreement.

28. Force Majeure. Neither Party shall be responsible for any delay or failure in performance caused by flood, riot, insurrection, fire, earthquake, strike, communication line failure, power line failure, explosion, acts of terrorism, act of God, or any other force or cause beyond its reasonable control.

29. Conflict of Interest. The Parties have read and are aware of the provisions of section 1090 et seq. and section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All Parties hereto agree that they are unaware of any disqualifying financial or economic interest of any public officer or employee of County or the Authority relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, County may immediately terminate this Agreement by giving written notice thereof. Authority shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.

**[Signature page follows]**

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Closing Date.

**COUNTY**

**AUTHORITY**

**COUNTY OF KERN**

**KERN COUNTY HOSPITAL  
AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO CONTENT:  
County Administrative Office

APPROVED AS TO CONTENT:  
Kern County Hospital Authority

By \_\_\_\_\_  
Assistant County Administrative Officer

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
Office of County Counsel

APPROVED AS TO FORM:  
Office of County Counsel

By \_\_\_\_\_  
Theresa A. Goldner  
Kern County Counsel  
Counsel for County of Kern

By \_\_\_\_\_  
Karen S. Barnes  
Chief Deputy County Counsel  
Counsel for Kern County Hospital  
Authority

**Exhibit A**  
**Agreement of County Services**

The Authority shall purchase the following Transition Services from County:

**Treasurer-Tax Collector Services**

If the Authority remains in the County Treasury Investment Pool, then County shall provide the following Treasurer-Tax Collector services to Authority:

1. Participation in the County's Treasury Investment Pool.
2. Participation and utilization of the Treasurer's electronic record of receipt (EROD) program. This may include daily sweeps of designated outside bank accounts into County bank accounts for purposes of Treasury Pool investing.
3. Access to the County's on-line bank deposit reports for specific accounts as necessary for account reconciliation purposes.
4. Brinks armored car cash and check pick up services.
5. Other banking services, including:
  - Ordering cash bags and deposit slips
  - Processing returned checks and completing corresponding debit memos
  - Cash change requests
  - Reconciling cash and check deposits
  - Processing unclaimed monies through the publication and escheatment process
  - Wiring DSH payments
6. Lock boxes - Authority lock box services are under the Treasurer's main banking agreement with Wells Fargo, the Authority lock box usage will be billed directly to the Authority and paid directly by the Authority.

**Consideration:** Authority agrees to pay County for Treasurer Tax Collector services in accordance with Sections 27013 and 53684(b) of the California Government Code and other applicable provisions of the Government Code. Any cost shall be netted against the interest earnings.

**Auditor Controller Services**

Accounts Payable services shall include:

1. Journal Vouchers – Allow access to and use of journal entry program for entry of data into financial system.
2. Signature Cards – The Authority will be responsible to keep signature cards up to date and on file with the Auditor-Controller.
3. Reissuance of stale dated warrants – Standard handling of stale dated warrants.
4. Vendors – Maintenance of vendor files.
5. Travel Authorization System – Allow access if Auditor-Controller can make the programming changes to accommodate the Authority's request that the CAO approval level be deactivated for all Hospital Authority requests. System provides tracking of travel request submissions from employee/department and tracking of authorization

given by administration. The travel authorization system is only available for employees who are paid through the County's payroll system. It would be used by the Authority prior to payment of travel reimbursement by voucher or claim.

**Services if the claim payment system is used:**

6. Budget - Maintenance of budget and appropriation control in the financial management system, subject to the Authority's continued use of necessary budget, payroll, payment and journal entry systems. If alternate sub-systems are implemented by the Authority, budgetary and appropriation control will no longer be accurate in the County system.
7. Miscellaneous Claims and Credit Memos – Processing payments and corresponding financial accounting in FMS for claims submitted. Miscellaneous claims will not be reviewed for the validity of the procurement process. Purchase Order and Contract payments will not be available because the Authority will not be using the County's procurement systems.
8. Government Code Refunds - Processing payments and corresponding financial accounting in FMS for claims submitted. Government Code Refunds will only be available as long as the Hospital Authority is using the Treasurer's EROD system to make all deposits of funds.
9. 1099 reporting - Automatic for payments made through claims system. Not available for payments made through voucher system. If the Authority's reporting must be separate from the County's reporting, the cost for preparing the reports for the Hospital Authority's signature will be a separate charge based on the hourly rate.
10. Sales Tax - Tracking and reporting to Board of Equalization for items entered in the County claims system. The County claims system will allow the Authority to add sales/use tax to a vendor payment if it was not collected properly by the vendor. If the Authority's reporting to the State must be separate from the County's reporting, the cost for preparing the reports for the Authority's signature will be a separate charge based on the hourly rate.
11. Sales tax audits - All sales and use tax issues are subject to audit by the State Board of Equalization, or other taxing authorities as appropriate. The Authority will be responsible for any audit findings or charges related to vendor payments initiated by or made on behalf of the Authority. The cost for the Auditor-Controller to respond to audit inquiries will be a separate charge based on the hourly rate.
12. Travel - Travel advances, collection from employee for over advance, and travel claim payment. Automated/electronic travel advances, collection and claim payment are only available if the Authority is utilizing the County's budgetary control system because the travel system is designed to charge against appropriations. Otherwise, travel advances and status of collection of overpayments will be tracked manually by the Authority and submitted for manual processing by the Auditor's office. Additionally, the travel advance system and travel advance collection of overpayment from employees are only available for employees who are paid through the County's payroll system.

**Services if the voucher payment system is used:**

13. Voucher Payments –Access to the voucher system for non-budgetary payments.
14. Processing of payments, and corresponding financial accounting for vouchers submitted. Voucher payments are not reviewed by the Auditor’s office for proper support, appropriateness, accuracy, budget impact or any other purpose. Voucher payments are cash disbursements that are not recorded in the financial system as expenditures. They are deducted from the fund’s cash and Retained Earnings

**Payroll services shall include:**

1. CES/NOE - Hiring documentation, employment change documentation (title, step, accrual balance adjust, leave tracking, tax withholding) and CES Special Pays Upload. Auditor will make programming changes so that Authority has final approval of CES/NOEs.
2. Payroll processing - Includes all calculations, payment/direct deposit to employees.
3. Review of Special Pay Allowances. The Authority will use the Special Pay Allowance module. Any new Special Pay Allowances requested by the Authority are subject to approval by the Auditor and KCERA prior to being added to the County’s payroll system.
4. Deductions - Maintenance of all current employee deductions and remittance to proper entities, including voluntary deductions, garnishments reported to the Auditor’s office, benefits, etc. Any new voluntary deductions requested by the Authority are subject to approval by the Auditor prior to being added to the County’s payroll system.
5. Total Compensation - Electronic paystub and standard internet access to electronic paystub.
6. State Disability Insurance integration.
7. Workers’ Compensation payroll coordination. Procedures and cost will need to be established and agreed upon if the Authority does not use Kern County Risk Management as the administrator for their worker’s compensation program.
8. Salary advances and requests for correction of payroll errors.
9. Payroll taxes and reporting (deposits, quarterlies, W-2s, etc.). The Auditor will process and remit bi-weekly payroll tax deposits, prepare quarterly payroll tax reports, and prepare, mail and electronically submit W-2s. The Authority will be responsible to sign and submit all payroll tax documents that require employer’s signature, including, but not limited to, quarterly payroll tax reports and the annual W-2 transmittal.
10. Assistance with the State Controller’s Compensation Report will be provided to the Authority only if requested and the cost will be a separate charge based on the hourly rate.
11. Processing of any Section 415 Replacement Pension payments will be provided and the cost will be a separate charge based on the hourly rate.

The Authority is responsible for administering the Authority employee access to accounts payable, payroll and any other Auditor-Controller systems.

***Consideration:***

Unless noted above, the County Auditor-Controller will charge a “per warrant” fee to provide the services listed above under Accounts Payable items 5 through 10 and Payroll items 1 through 6. The per warrant fee will be updated annually and made available at the beginning of each fiscal year. Other services listed above will be provided on an hourly basis calculated using the actual time spent and the established rate. Programming to accomplish the transition and Help Desk services will be charged at the applicable hourly rate. If additional other services related to accounts payable, payroll, programming or any other services are later identified that the County Auditor-Controller and the Authority agree should be provided by the Auditor-Controller, the Authority will be billed at the actual hourly rate at the time services are provided. Any costs or charges to the Authority will be charged by journal entry by the Auditor-Controller.

**General Services**

1. Purchase agreements made available to government entities.

***Consideration:*** All direct services to the Authority will be billed at an hourly rate agreed upon the beginning of the fiscal year.

2. Fleet management and maintenance.

***Consideration:*** Fleet services will be reimbursed upon the service plan selected by the Authority, as described in that certain Kern County Administrative Office, General Services Division, Fleet Services, Service Plan Options document. The Authority will only have the option of selecting Service Plan 2 or 3. Rates are calculated and available prior to the beginning of the fiscal year, service charges will be billed at the time of service is provided if Service Plan 3 is selected.

3. Construction Services

Construction Services currently provides comprehensive project management for major maintenance and repair and capital projects occurring at the Authority. More specifically, Construction Services performs management of consultants, including architects and engineers, inspections, hazardous material testing, any required permitting with various entities, bids/proposals, accounting, billing and payment process, contracting, and general project management.

It is anticipated that Construction Service will continue to closeout existing projects through the next fiscal year. The following staff would be charged to the Authority on an hourly rate:

- a. Supervising Engineer/Project Manager
- b. Engineer
- c. Contract Specialist
- d. Construction Project Inspector

***Consideration:*** All direct services to the Authority will be billed at an hourly rate agreed upon the beginning of the fiscal year.

## **Information Technology**

1. GroupWise software – tied to master County agreement but usage is billed directly to the Authority and paid directly by the Authority.
2. Telephone Services
  - a. Avaya Maintenance contract for network equipment
  - b. PBX
  - c. Call Management System
  - d. Verasmart
  - e. Voicemail
  - f. VoIP
3. Data Center (space, power and equipment)
4. SAN Equipment

### ***Consideration:***

Telecommunication charges include equipment, dial tone, line use, system and one-time costs. Charges to the Authority will be based on billing invoices for phone lines and equipment assigned, in some cases, shared costs of phone systems and equipment. Any telecommunication systems upgrades such as voice over internet protocol, call center, extension to cellular, and Conference Bridge will be paid by the hospital authority at cost. In addition, warranties and repairs will be covered by the Authority as a pass-through third party vendor or based on agreed upon hourly rate.

Central data processing charges are as follows:

- Mainframe Infrastructure Support. This charge will include the direct personnel cost supporting the payroll/personnel process, and the County's financial management system, maintenance, operating system and data base management software licenses and support, uninterruptible power supply. Charges will be based on the proportional use of batch and on-line processing.
- Data Center will include an agreed upon rate for the use of the data center.
- Other support agreement will be charged as pass-through charge to the Authority.
- Special requests for data processing, special operations requests such as extractions of mainframe or internet firewall data, special requests to utilize information technology staff for equipment installation, maintenance, and planning and special request for changes or enhancements to phone system will be billed upon agreed hourly rate.

Estimates for all information technology charges will be provided prior to the beginning of a fiscal year for planning purposes only. Direct billing will be provided with actual cost will be reconciled through the Countywide Cost Allocation Plan approved by the State of California.

**County Administrative Office**

1. Information Security Officer on part-time basis not to exceed 48 hours per pay period through September 30, 2016, unless by mutual agreement of the parties the period is extended.

***Consideration:*** All direct services to the Authority will be billed at cost quarterly.

**Exhibit B**  
**Business Associate Agreement**

[Attached]



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

May 18, 2016

**SUBJECT: Adoption Agreement for Deferred Compensation Plan**

**Required Action: Approve; Authorize Chairman to sign.**

**Summary:** Requesting Board adopt agreement to allow eligible Kern Medical employees to continue their participation in the County of Kern Deferred Compensation Plan (Plan I) and the Deferred Compensation Plan for Part-Time, Seasonal, and Temporary employees (Plan II) after the transition to the Hospital Authority.

Plan I is a voluntary plan for the sole benefit of eligible “permanent” employees. Plan II is for part-time, seasonal and temporary (PTST) employees and is designated as a Social Security substitute regulated by federal law. PTST employees make a mandatory contribution of 7.5% of their pay to Plan II.

**ADOPTION AGREEMENT**  
**FOR THE COUNTY OF KERN**  
**DEFERRED COMPENSATION PLAN (PLAN 1) AND**  
**COUNTY OF KERN DEFERRED COMPENSATION PLAN - PART TIME,**  
**SEASONAL, TEMPORARY (PLAN 2)**

*(County of Kern - Kern County Treasurer-Tax Collector - Kern County Hospital Authority)*

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the COUNTY OF KERN, a political subdivision of the state of California, herein referred to as "County," the Kern County Treasurer-Tax Collector, herein referred to as "Treasurer," and the Kern County Hospital Authority, a county hospital authority and local unit of government separate and apart from the County and any other public entity, herein referred to as "KCHA."

**RECITALS**

**WHEREAS**, County maintains certain fringe benefit and deferred compensation plans, including the County of Kern Deferred Compensation Plan ("Plan 1") and the County of Kern Deferred Compensation Plan - Part-time, Seasonal, Temporary Employees ("Plan 2") (collectively, the "Plans"); and

**WHEREAS**, Treasurer, directly and through consultants qualified in the management of deferred compensation plans, is the Administrator of the Plans; and

**WHEREAS**, KCHA desires to allow the employees that transfer employment from the County to the KCHA to remain in the Plans and to allow any new KCHA employees hired after the effective date of transfer to participate in the Plans; and

**WHEREAS**, County's plan documents permit an eligible employer to adopt the Plans as the participating employer's plans subject to certain conditions, including the execution of an agreement between the County, the Administrator and the participating employer; and

**WHEREAS**, County, KCHA and Treasurer desire to contract for the adoption and administration of the Plans on behalf of KCHA;

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties as follows:

1. Effective July 1, 2016, or the effective date of transfer, whichever comes first, KCHA hereby adopts the Plans, as attached hereto as Exhibits "A" and "B," respectively and by this reference incorporated herein, on the terms specified below.

2. KCHA hereby authorizes Treasurer, either directly or through a contract administrator selected by Treasurer pursuant to the terms of the Plans, to be the Plan Administrator and the Treasurer shall perform all such duties in conformance with the Plans. KCHA shall be responsible for compliance with all terms and conditions of the Plans, including the payment of any fees or costs associated with administration of the Plans by Treasurer. Any such costs shall be promptly communicated by Treasurer to KCHA.

3. Treasurer and County shall establish necessary deferred compensation funds on behalf of KCHA, to which all deferred compensation shall be credited in accordance with the Plans, at such times as the compensation which would have been payable to County employees participating in the Plans would have been payable to such employees if they were not participants in the Plans.

4. KCHA's adoption of and participation in the Plans is subject to the following conditions:

a. KCHA shall remain a participant in the Kern County Employees' Retirement Association, with respect to participation in Plan 1.

b. KCHA shall not maintain any other deferred compensation plan other than the Plans. KCHA shall notify the Treasurer should it initiate any other deferred compensation plans.

c. KCHA shall be responsible for providing all necessary contributions by an employer under Plan 1.

5. KCHA may withdraw from one or more of the Plans only upon providing 120 days' notice to Treasurer and County and upon fulfilling such other obligations to County or Treasurer as may be required under the Internal Revenue Code and other applicable laws.

6. The parties to this Agreement shall indemnify, defend and hold harmless the other parties hereto and their officers, agents and employees, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorneys' fees, which may arise by virtue of its own acts or omissions (either directly or through or by its officers, agents or employees) in connection with its duties and obligations under this Agreement and any amendments thereto.

7. Any notice to be given hereunder by either party to the other may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated within three days from mailing.

Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph:

County of Kern  
County Administrative Office  
1115 Truxtun Avenue, 5th Floor  
Bakersfield, CA 93301

Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306  
Attn.: Chief Executive Officer

Kern County Treasurer-Tax Collector  
1115 Truxtun Avenue, 2nd Floor  
Bakersfield, CA 93301

8. Each individual executing this Agreement on behalf of the parties herein represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of the party on whose behalf he or she is signing.

9. County agrees that it will take all steps necessary to maintain the eligibility of the Plans under Section 457 of the Internal Revenue Code and other applicable laws.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year herein above set forth.

APPROVED AS TO FORM:  
Office of County Counsel

By: \_\_\_\_\_  
Chief Deputy

KERN COUNTY HOSPITAL  
AUTHORITY

By: \_\_\_\_\_  
Chairman, Board of Governors

COUNTY OF KERN

By: \_\_\_\_\_  
Chairman, Board of Supervisors

KERN COUNTY TREASURER-TAX  
COLLECTOR

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

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DEFERRED COMP. PLAN.docx



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

**SUBJECT: Agreement with the County of Kern, as represented by the Department of Child Support Services, for paternity-related services.**

**Required Action: Approve. Authorize Chairman to sign.**

The Agreement for Professional Services provides for the County of Kern, as represented by the Department of Child Support Services and Kern County Hospital Authority to coordinate their respective efforts and delineation of the responsibilities relating to the Title IV-D program (commonly referred to as the Paternity Opportunity Program (POP)).

The purpose of the program is to secure financial support for minor children, including, but not limited to, identification of location of absent parents, determination of paternity of children born out of wedlock, determination of the absent parent's ability to support their minor children, establishment of support obligations, and enforcement of support obligations. Kern County Hospital Authority will receive \$10.00 for each properly completed and signed declaration of paternity (POP's) form. The agreement will be effective July 1, 2016 and end effective June 30, 2021.

AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(County of Kern – Kern County Hospital Authority)

**I**  
**Purpose**

This Intra County Plan of Cooperation (hereinafter, "State Plan"), is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between County of Kern, a political subdivision of the state of California, as represented by the Department of Child Support Services and the Kern County Hospital Authority, a county hospital authority ("KCHA"), which owns and operates Kern Medical Center ("KMC") for the coordination of their respective efforts and delineation of responsibilities relating to the Title IV-D program. The purpose of this State Plan is to establish responsibilities and guidelines for an effective program for the securing of financial support for minor children, including, but not limited to, identification and location of absent parents, determination of paternity of children born out of wedlock, determination of the absent parent's ability to support their minor children, establishment of support obligations, and enforcement of support obligations.

**II**  
**Recitals**

(a) County is authorized, pursuant to Government Code sections 31000 and 53060, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(b) Department of Child Support Services requires the assistance of KCHA to provide services, as such services are unavailable from County resources; and

(c) KCHA agrees to provide such services on the terms and conditions set forth in this Agreement.

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:

**III**  
**Confidentiality**

The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with the administration of the State Plan for establishing paternity, and establishing, enforcing, and modifying child support obligations pursuant to Federal and State laws and regulations. This includes, but is not necessarily limited to, the release of information obtained in connection with establishing eligibility, determining amounts of assistance, identifying and locating putative or deserting parents, establishing paternity, enforcing support obligations, investigating welfare fraud, and any investigation, prosecution of civil or criminal proceeding conducted in connection with the administration of the State Plan. No information which identifies any applicant or recipient of public assistance, by name or address shall be disclosed to any committee or legislative body.

## IV Standards

The parties to this agreement shall maintain an organizational structure and sufficient staff to administer and supervise all of the functions for which they are responsible under the State Plan or this Plan of Cooperation. In addition, the parties must meet the standards for program operations in accordance with 45 CFR 302 et seq. and 45 CFR 303.5.

## V Responsibilities

The Kern County Department of Child Support Services may enter into cooperative arrangements with other County departments and private entities as necessary to carry out the responsibilities imposed by the State Plan. When such a delegation of duties is made, the Kern County Department of Child Support Services shall be responsible and accountable for the execution of such duties within the County, and shall reasonably ensure that all such functions are being carried out properly, efficiently, and effectively.

Both parties to this Plan agree to comply with Title IV-D of the Social Security Act, implementing regulations, and all federal and state regulations and requirements promulgated there under.

The Kern County Department of Child Support Services shall have the following responsibilities:

1. To provide information, training and any necessary consultation with the hospital staff regarding the paternity determination process.
2. To participate in public awareness activities that may include, but is not limited to, making presentations to any selected target group and/or community groups to ensure the project is publicized within the County; and
3. To provide a financial payment on a monthly basis of ten dollars (\$10.00) for every declaration of paternity properly completed and signed by both parents and the witness.

KCHA shall have the following responsibilities:

1. To provide the natural mother and father a declaration of paternity and informational materials about the paternity opportunity program.
2. To assist the parents in completing the forms, as necessary.
3. To provide copies of the completed declarations of paternity to the parents and forward the completed declarations pursuant to the distribution instructions which are as follows: Original to the ***California Department of Child Support Services, Attn: POP Unit, PO Box 419070 Rancho Cordova, CA 95741-9070*** within twenty days from signature, yellow and pink copies to the parents, a legible photocopy of the original page and the green copy to the Kern County Department of Child Support Services.
4. To provide proper invoices of the services provided by itemizing the name of the child, child's date of birth, and the name of the father. Forward invoices on a monthly basis to the Kern County Department of Child Support Services Office ***at 1300 18<sup>th</sup> Street Bakersfield, CA 93301 in care of the Paternity Opportunity Program Coordinator.***

## **VI Financial Provisions**

The Kern County Department of Child Support Services shall maintain an accounting system and supporting fiscal records-adequate to ensure that claims for Federal funds are in accordance with applicable Federal and State requirements. All expenditures, to be eligible for Federal Financial Participation, must be claimed as outlined in 45 CFR 74.1, 45 CFR 304 et seq., and Manual of Policies and Procedures Division 12.

KCHA shall submit to the Kern County Department of Child Support Services a claim for all reimbursable costs associated with the Child Support Program pursuant to this State Plan on or before ten (10) working days from the last day of the calendar month. All claims must be supported with fiscal records adequate to insure that claims for reimbursement are according to Federal and State requirements and shall retain such records as required by Federal and State regulations.

## **VII Term**

This Plan shall commence on the transfer of Kern Medical Center to KCHA, which is scheduled to occur on or about July 1, 2016, and end effective June 30, 2021. It shall be renewed upon the same terms for additional periods of five-years contingent upon written agreement of both parties. Amendments by mutual written consent may be made at any time, including during renewal negotiations.

Should the contracting party be found deficient in any aspects of performance under this plan or fail to perform under the agreed standards, the contracting party will have the responsibility of submitting a proposed corrective action plan to the Kern County Department of Child Support Services. The corrective action plan shall identify specific action to be taken to correct the deficient performance areas and be submitted within 45 days after notification of the deficiencies. Should the deficient party fail to present a corrective action plan as required or take appropriate corrective action, the Plan will automatically terminate.

## **VIII General Provisions**

All records and documentation shall be maintained in accordance with Federal and State requirements and shall be made available to State and Federal personnel for the purpose of conducting audits of the program. The contracting party is responsible for safeguarding all information in accordance with 45 CFR 303.30, 45 CFR 303.70, 26 U.S.C. 6103 (p) (4), and California Family Code 17212.

[Signatures to Follow]

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Supervisors

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
Department of Child Support Services

APPROVED AS TO CONTENT:  
Kern Medical Center

By \_\_\_\_\_  
Marcus Mitchell  
Director, Child Support Services

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
Office of County Counsel

APPROVED AS TO FORM:  
Office of County Counsel

By \_\_\_\_\_  
Deputy

By \_\_\_\_\_  
Deputy



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

May 18, 2016

**SUBJECT: Agreement with the County of Kern for an Exchange of Services with  
A. Miriam Jamison Children's Center.**

**Required Action: Approve. Authorize Chairman to sign.**

A. Miriam Jamison Children's Center requires the utilization of certain services of Kern Medical to provide, Each child entering Jamison Children's Center receives a medical screening and ongoing medical care and treatment. This agreement provides for the above-mentioned mutual services.

**AGREEMENT FOR  
PROFESSIONAL MEDICAL SERVICES FOR CHILDREN  
AT A. MIRIAM JAMISON CHILDREN CENTER**

Independent Contractor  
(Kern County Hospital Authority - County of Kern)

THIS AGREEMENT (“**Agreement**”) is made and entered on \_\_\_\_\_ between the Kern County Hospital Authority, a county hospital authority which owns and operates Kern Medical Center (“**Authority**”) and the COUNTY OF KERN, a political subdivision of the state of California (“**County**”), as represented by the Department of Human Services (“**DHS**”). Authority and County/DHS are referred to individually as a “**Party**” and collectively as the “**Parties**”.

**I.  
RECITALS**

(a) County is authorized, pursuant to Government Code sections 31000 and 53060, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(b) The “Plan of Operation” for the A. Miriam Jamison Children’s Center (“**JCC**”) states “each child entering the Jamison Children’s Center will receive a medical screening”; and

(c) DHS requires the assistance of the Authority to provide medical services to the children at JCC, as such services are unavailable from County resources; and

(d) Authority agrees to provide such services on the terms and conditions set forth in this Agreement.

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 on the transfer of Kern Medical Center (“**KMC**”) to the Authority, which is scheduled to occur on or about July 1, 2016 (the “**Effective Date**”), and shall end June 30, 2018, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Authority.**

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

2.2 **Representations.** Authority makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Authority has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Authority does not have any actual or potential interests adverse to County; and (iii) Authority 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. County has relied upon the professional ability and training of Authority as a material inducement to enter into this Agreement. Authority 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 Authority's work by County shall not operate as a waiver or release.

3. **Obligations of County.**

3.1 Specified Services. County shall perform the services set forth in **Exhibit "B"**, attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

3.2 Representations. County makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) County has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) County does not have any actual or potential interests adverse to Authority; and (iii) County shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

3.3 Standard of Care. Authority has relied upon the professional ability and training of County as a material inducement to enter into this Agreement. County 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 County's work by Authority shall not operate as a waiver or release.

3.4 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. County 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. **Representations.** DHS and Authority make the following representations, which are agreed to be material to and form a part of the inducement for this Agreement:

4.1. Authority agrees that its subcontractors shall be held to the same standards, requirements and expectations as stated in this Agreement; and

4.2. Authority has the expertise and support staff necessary to provide the services described in this Agreement; and

4.3. Authority shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions stated in this Agreement; and

4.4. DHS shall not object to or deny care recommended by Authority Staff for JCC's residents; and

4.5. The purpose of the Agreement is to provide services and treatment covered by Medi-Cal or other patient insurance. Medical treatment or services recommended by Authority that are not approved by Medi-Cal or other patient insurance and are non-life threatening must be pre-approved in writing by the DHS Director or designee. Services, treatment, or costs not covered by Medi-Cal or other patient insurance which are pre-approved in writing by the DHS Director or designee shall become the responsibility of DHS. Life threatening services and treatment not covered by Medi-Cal or other patient insurance should be treated as any other children, with no involvement with DHS, are currently treated in similar circumstances.

5. **Evaluation.** Services to be provided by Authority shall be evaluated by DHS on a continuing basis. Evaluation may be accomplished by written or verbal communication and/or by site visits to view fiscal and/or program processes and information. Any deficiencies noted during an evaluation shall be stated and placed in detailed written form, with a copy submitted to Authority. Authority shall respond in writing to the deficiencies statement within 20 days from the date of receipt. A plan to remedy these deficiencies, where applicable, shall be implemented within 60 days from the date of the deficiencies statement. Criteria used to evaluate Authority services shall be based upon the agreed responsibilities listed in the Authority. Failure to remedy the stated deficiencies may result in termination of the Agreement by DHS.

5.1. Deficiencies that may be subject to non-payment of future invoices by DHS shall include:

A. Failure to notify DHS and receive prior written approval for any changes to Program delivery within 15 days of change for:

1. Change in assigned program staff.
2. Change in program or service hours and days.
3. Change in program or service locations and access for participants.

B. Failure to request, in writing, and receive written pre-approval from DHS for changes to, or the addition of line items in, the approved budget.

C. Failure to provide written assurance of required civil rights training as detailed in Paragraph 30, below.

6. **Recommendation for Improvement.** Recommendations for improvements to the services and facilities included in this Agreement will be submitted in writing by Authority. DHS and Authority agree to meet and discuss recommendations. DHS will respond to recommendations after discussion; final decisions will be submitted in writing within 30 calendar days.

7. **Payment for Services.**

7.1 **Fees and Charges.** DHS shall reimburse Authority for all necessary and reasonable costs incurred on behalf of DHS as set forth in **Exhibit "C"**, which is attached hereto and incorporated herein by this reference, in an amount not to exceed \$766,264 for the two (2) year term of this Agreement. DHS will reimburse Authority \$383,132 annually as stated in Exhibit "C", Projected Cost.

A. Consideration will be made to the cost of the drug prescription to be billed. DHS has estimated drug prescription cost to be \$4,000 per fiscal year for the contract period. DHS will reimburse Authority 100% of the cost not reimbursed by the child's Medi-Cal or private

insurance, whether or not it exceeds the estimated annual \$4,000 cost.

B. No fund paid to Authority through this Agreement shall be utilized to compensate employees of Authority for overtime or compensatory time off, except to the extent that Authority is required to pay for overtime or compensatory time off pursuant to the Fair Labor Standards Act of 1938, 20 USCS Section 201 et seq., or applicable State law..

7.2 Taxes. Parties agree 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.

7.3 Invoices. Authority shall submit semi-annually to DHS an invoice for reimbursement of allowable expenditures incurred in the performance of this Agreement, with the exception of medications obtained by Authority. Medications obtained from Authority shall be billed first to Medi-Cal. Authority shall submit monthly to DHS an invoice for only those costs for medication not reimbursed by Medi-Cal as covered in this Agreement. Costs claimed under this Agreement are subject to the following federal publications from the Office of Management and Budget (OMB”) (current publications are available online and can be found at [www.whitehouse.gov/omb/circulars/](http://www.whitehouse.gov/omb/circulars/)):

- Uniform Guidance: 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements

A. All invoices submitted to DHS shall be arranged in the same order as the approved budget.

B. Authority shall adjust from its billings to DHS, all charges not fully reimbursable under the applicable cost principle and this Agreement. Authority accepts fiscal responsibility for any future audit findings resulting from Authority billings under this Agreement. Authority shall refund DHS for all costs related to this Agreement which are disallowed by California Department of Social Services (“CDSS”) as a result of audit findings or insufficient funds available from the State.

C. Authority shall comply with all audit exceptions by appropriate federal, State and County audit agencies as prescribed by the auditing agency, and provide all required audit documentation to DHS pertaining to the services required by this Agreement.

D. DHS reserves the right to withhold payment if Authority falls behind schedule or submits substandard work, as specified under Section 2 of this Agreement.

E. Final invoices must be received by DHS no later than 60 days following termination of this Agreement.

F. Budget funds are restricted for use within the budget fiscal year. Administrative shifts of funds among budget line item accounts or the addition of budget line items cannot be approved without prior submission of a revised budget by Authority and prior written approval by DHS.

G. Authority shall submit all invoices including accrued costs for the work done to date in the current fiscal year to DHS’s Accounts Payable Unit not later than June 1, with an estimate for reimbursable costs for the work to be done through June 30. DHS’s fiscal year funding allocation ends June 30. A final adjustment from estimated accrual to actual

reimbursable cost shall be received at the earliest possible date, but not later than 60 days after the close of the fiscal year.

8. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, Authority and County 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 the Parties provided under this Agreement. The Parties further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

9. **Assignment.** The Parties shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the written consent of the other Party. The Parties shall not assign any money due or which becomes due to a Party under this Agreement without the prior written approval of the other Party.

10. **Audits, Inspection and Retention of Records.** The Parties agree to maintain and make available to the other Party accurate books and records relative to all its activities under this Agreement. The Parties shall permit the other Party 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. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon the Parties herein.

11. **Authority to Bind.** It is understood that neither Party, in its performance of any and all duties under this Agreement, has no Authority to bind the other Party to any agreements or undertakings.

12. **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.

13. **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.

14. **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.

14.1. Should a dispute arise between Authority and DHS relating to performance under this Agreement, Authority will, prior to exercising any other remedy which may be available, provide DHS with written notice of the particulars of the dispute within 30 calendar days of the dispute. DHS will meet with Authority, review the factors in the dispute, and recommend a means of resolving the dispute before a written response is given to Authority. DHS will provide a written response to Authority within 30 days of receipt of Authority's written notice.

15. **Compliance with Law.** The Parties shall observe and comply with all applicable County, 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.

16. **Compliance Program.** During the term of this Agreement, the Parties shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for the Parties' assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline Authority's assigned personnel who violate the Parties' policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with the Parties. The Parties' assigned personnel shall demonstrate the existence of an internal compliance program or plan.

17. **Confidentiality.**

17.1 Each Party recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to the other hereunder, it may have access to certain information of the other Party that constitutes a trade secret or is otherwise confidential and constitutes valuable, special, and unique property. Each Party acknowledges their mutual confidential relationship and each Party's respective ownership of all proprietary and confidential information not generally available to the public or legally accessible from third parties relating to the respective businesses of the Parties, including without limitation, business plans, marketing plans, statistical data and reports, pricing, reimbursement and other financial information relating to a Party's ongoing business, treatment methods, and all quality assurance and utilization review information (the foregoing is collectively referred to as "Confidential Information"). Notwithstanding the foregoing, Confidential Information will not include information: (i) rightfully in the public domain or which hereafter becomes a part of the public domain (other than through a breach of this Agreement); (ii) required to be disclosed by law; (iii) that is independently developed by the non-disclosing party; or (iv) that was learned by the non-disclosing Party from a third party who did not impose a confidentiality obligation on such party. Each Party hereto acknowledges and agrees that the receiving party may be provided access to Confidential Information solely to enable the parties to perform services as provided for or contemplated in this Agreement. Except as otherwise required by applicable law, each Party agrees to hold the other Party's Confidential Information in strictest confidence and not to disclose it or allow it to be disclosed directly or indirectly to any person or entity (other than persons employed or engaged by the recipient Party who have a need to know such information and who are obligated by written agreement to

maintain the confidentiality thereof) without the other Party's prior written consent.

17.2 **Medical Records.** If applicable, 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.

17.3 **Protected Health Information.** The Parties will comply with all federal and state laws governing the privacy, confidentiality and security of protected health information and medical information including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and implementing regulations ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder (the "HITECH Act"), 42 CFR Part 2, and applicable California privacy, confidentiality and security laws and regulations, all as amended from time to time. The Parties agree and to consult and cooperate with one another to assure appropriate and consistent handling of protected health information and medical information. The provisions of this paragraph shall survive termination of this Agreement. The Authority also agrees to abide by the terms of the HIPAA Business Associate Agreement attached hereto as **Exhibit D** and made a part hereof.

18. **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.

19. **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. Authority and County 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. Authority and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

20. **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.

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

breach of this section shall give the non-breaching party the right to terminate this Agreement immediately.

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

23. **Indemnification and Hold Harmless.** The Parties agree to indemnify, defend and hold harmless the other Party and its agents, board members, elected and appointed officials and officers, employees, 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 County Counsel and counsel retained by the Party, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of the other Party or its officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. 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; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of the Party by any person or entity.

24. **Independent Contractor.** In the performance of the services under this Agreement, the Parties shall be, and acknowledges that the other Party is in fact and law, an independent contractor and not an agent or employee of the other Party. Each Party has and retains the right to exercise full supervision and control over the manner and methods of providing services to the other Party under this Agreement. Each Party retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting the Party in the provision of services under this Agreement. With respect to a Party's employees, if any, the Party shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, state or local, and compliance with any and all other laws regulating employment.

25. **Insurance.** Each party shall maintain, at its own expense, worker's compensation with statutory limits, commercial, general and professional liability insurance or self-insurance for bodily injury, death and property loss and damage (including coverage for product liability, completed operations, contract liability and personal injury liability) for claims, lawsuits or damages arising out of its performance under this Agreement or the negligent or otherwise wrongful acts or omissions by such party or any of its employees or agents. With the exception of worker's compensation insurance, all such policies of insurance shall provide minimum limits of liability in the amount of one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) annual aggregate. If such coverage is provided on a claims-made basis, such insurance shall continue through the later of the expiration or cancellation of such policy or the termination, expiration or completion of this Agreement and upon the termination, expiration or completion thereof, or the expiration or cancellation of the insurance, such party shall purchase or arrange for the purchase of either an unlimited reporting endorsement "Tail Coverage" or "Prior Acts" coverage with a retroactive date on or prior to the Effective Date of this Agreement, whichever is earlier, for a period of not less than five (5) years following the termination, expiration or completion thereof. Upon request of a party, a certificate of insurance evidencing the existence of all coverage required hereunder shall be provided.

26. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the

Parties in interest at the time of the modification.

27. **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 County and Authority. 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 the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

28. **Non-appropriation.** The Parties 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, the terminating Party will be released from any further financial obligation to the other Party, 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. The terminated Party will be given 30 days' prior written notice in the event that a Party requires such an action.

29. **Non-Collusion Covenant.** Authority 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 DHS. Authority has received from DHS no incentive or special payments or considerations related to the provision of services under this Agreement.

30. **Nondiscrimination.** Neither Party, nor any officer, agent, employee, servant or subcontractor of the Parties, shall discriminate in the treatment or employment of any individual or group of individuals on the grounds of age, sex, color, disability, national origin, race, marital status, sexual orientation, religion, political affiliation, or any other classification protected by law, either directly, indirectly or through contractual or other arrangements as described in CDSS Manual of Policies and Procedures, Chapter 21. . The Parties will further adhere to all mandated requirements as described in the CDSS Manual of Policies and Procedures, Chapter 21 which can be found at <http://www.dss.cahwnet.gov/getinfo/pdf/3cfcman.pdf>.

The Parties understand and acknowledge that its assurance is given in consideration of and for the purpose of receiving compensation for service as provided in this Agreement, which compensation is funded through federal and State assistance. In the event a Party is subject to any fiscal sanction or other legal remedies as a result of the other Party's failure to comply with the requirements of this section, the defaulting Party shall indemnify and hold harmless the harmed Party from any such fiscal sanction or other legal remedy imposed against the Party as provided in the indemnification provisions of this Agreement. The defaulting Party shall participate in and pay the harmed Party's costs incurred in the defense of any judicial or administrative hearing or process to determine where a violation of this section has occurred.

The Parties acknowledge that they, as recipients of such funding, are obligated to comply with State and federal requirements regarding nondiscrimination, as evidenced by form CR-50, Assurance of Compliance, (**Exhibit "E"**). County Requires Authority to sign Exhibit E as a requirement of entering into this Agreement.

31. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (ii) solicit, advise or otherwise

do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement.

32. **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 County: Kern County Department of Human Services  
P.O. Box 511  
Bakersfield, CA 93302  
Attn: Director

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

33. **Ownership of Documents.** Medical reports created by Authority staff at JCC in the course of providing services to DHS under this Agreement will be the property of Authority. Authority will create and maintain such medical records in accordance with state and federal laws and regulations. Nothing herein will affect the transmission of health information to JCC staff or caregivers at the time of discharge.

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

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

36. **Termination.**

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

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

36.3 **Immediate Termination.** Notwithstanding the foregoing, the Parties shall have the right to terminate this Agreement effective immediately after giving written notice to the other Party, for any of the following reasons: (i) a Party determines that the other Party does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by the other Party in the providing of services may result in civil, criminal, or monetary penalties against the Party; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which the Party is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by the other Party which causes material harm to the Party; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by the other Party against the Party; (vi) the loss or threatened loss of the Party's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of the other Party; or (vii) the failure of a Party to cure a default within the time allowed in section 36.1.

37. **Effect of Termination.**

37.1 **Payment Obligations.** In the event of termination of this Agreement for any reason, the terminating Party shall have no further obligation to pay for any services rendered or expenses incurred by the other Party after the effective date of the termination, and the other Party shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

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.

(Remainder of Page Intentionally Left Blank)

IN WITNESS TO THE FOREGOING, the Parties have executed this Agreement as of the day and year first written above.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Supervisors

APPROVED AS TO CONTENT:  
Department of Human Services

By \_\_\_\_\_  
Dena Murphy  
Director

APPROVED AS TO FORM:  
Office of County Counsel

By \_\_\_\_\_  
Gurujodha Khalsa,  
Chief Deputy County Counsel

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
Kern Medical Center

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
Office of County Counsel

By \_\_\_\_\_  
Shannon Hochstein,  
Deputy County Counsel

## EXHIBIT "A"

### Description of Authority Services

A part-time Nurse Practitioner/Physician's Assistant and full-time Staff Nurse shall be assigned to JCC Monday through Friday, with scheduled hours to be agreed upon between DHS and Authority management. The Nurse Practitioner/Physician's Assistant and Staff Nurse shall provide the following services under the supervision of the Authority Physician assigned to JCC:

- A. Provide ongoing primary medical care and minor treatment to children at JCC as deemed necessary. Services shall include but not be limited to the following:
  1. Administer medications, which will include; obtaining medications, ensuring refills for medications occur in a timely manner, maintaining medication charts, destroying medications, prescribing medications as allowed by applicable law, and giving medication to JCC children by the Registered Nurse/Nurse Practitioner on duty. Medications shall be maintained in secured storage provided by DHS. The Nurse Practitioner/Physician's Assistant and Staff Nurse shall have access and control of a storage drawer in the Nurse Practitioner/Physician's Assistance's office to store frequently over-the-counter medications and prescribed medications; and
  2. Educate/Consult with minors and caregivers regarding common medical, social, and physiological conditions. Refer to mental health and other providers as necessary and appropriate; and
  3. Assist the Authority Physician assigned to JCC in the initial screening examination and treatment of children housed at JCC. The initial screening examination will take place within 72 hours of arrival at JCC. If a child is admitted on a weekend or holiday, an appointment will be scheduled for the next available slot; and
  4. Obtain a medical history for every child admitted to JCC. Examine and initiate a medical record for each child which will include height, weight, vision, hearing, hemoglobin test, TB skin test, immunizations (as deemed necessary), and special needs; and
  5. Complete CHDP exams within the 30 day regulatory timeframe for residents of JCC; and
  6. Document as appropriate all medical care provided in the medical record; and
  7. Coordinate and refer medical services unable to be provided on-site with Authority emergency room or other agreed upon facilities to include the following:
    - a. Ophthalmic, optometric, and optical services
    - b. Dental services
    - c. Hemodialysis services
    - d. Durable medical equipment ("**DME**") and prosthetic services
    - e. Mental health services
    - f. Intravenous ("**IV**") antibiotics, psychotropic drugs, synergyn, and Methadone
    - g. Blood transfusions
    - h. Splinting, fracture care
    - i. Obstetrics and Gynecology ("**OB/GYN**") services

## EXHIBIT "A"

- j. Sexually transmitted diseases ("STDs")
- 8. Provide needed and on-going primary medical care and minor treatment to children which can appropriately be performed at JCC; and
- 9. Notify and consult with cafeteria staff with regard to special medical dietary needs; and
- 10. Advise social work and law enforcement personnel regarding transporting a child to hospital for examination prior to admission to JCC; and
- 11. Provide statistical and other reports, as required; and
- 12. Order specialized diagnostic tests, diagnose, and prescribe treatment for common illnesses; and
- 13. Perform other related services under the supervision of a licensed physician as permitted by protocols and within the scope of a Nurse Practitioner/Physician's Assistant and Staff Nurse License.
- 14. Kern Medical licensed physician monthly will review and provide the needed physician oversight as permitted, and required by protocols and within the scope of a Nurse Practitioner/Physician's Assistant and Staff Nurse License. (This will include phone support, chart and prescriptive oversight.)

Provide necessary equipment, maintenance of equipment, necessary pharmaceuticals, and all necessary office and medical supplies as determined by DHS and Authority.

## EXHIBIT "B"

### Description of County Services

DHS shall assume responsibility for providing the following services:

- A. Provide necessary equipment, maintenance of equipment, and all necessary medical and office supplies, as determined by DHS and Authority; and
- B. Collaborate with assigned Nurse Practitioner/Physician's Assistant and Staff Nurse to ensure children's medical needs are met while at JCC; and
- C. Provide work area appropriate for the needs of the Nurse Practitioner/Physician's Assistant and Staff Nurse located at JCC; and
- D. Provide access to a personal computer with standard County Office Suite software and maintenance; and
- E. Provide network attachment to Authority computer network and e-mail account; and
- F. Provide access to a network printer; and
- G. Provide medications and secured storage for medications. Designated DHS personnel shall have control of the compartmentalized portable cart, referred to as the "Med Cart" and the locked refrigerator located in the examination room. Overflow stock of over-the counter medications and supplies will be stored in a locked closet in the Jess Diamond Child Assessment Center, and both designated DHS and Authority personnel shall have access to the closet; and
- H. Provide for the disposal of hazardous waste and biomedical trash.

**Healthcare Services at Jamison Children's Center  
July 1, 2016 through June 30, 2018  
Exhibit C**

**Projected Budget - 2 Year MOU**

<u>Positions</u>	Annual Salaries & Benefits <sup>2</sup>	Billable Percentage for D.H.S	FY 2016-2017	FY 2017-2018	<b>Total Billable Amount D.H.S</b>
Physician	15,000	100%	15,000	15,000	<b>30,000</b>
Nurse Practitioner	87,546	100%	87,546	87,546	<b>175,092</b>
Nurse II	175,484	100%	175,484	175,484	<b>350,968</b>
Aide/Attendant	0	0%	0	0	<b>0</b>
Admin Coordinator	0	0%	0	0	<b>0</b>
Medical Support Specialist	66,272	100%	66,272	66,272	<b>132,544</b>
Clerical	0	0%	0	0	<b>0</b>
	<hr/> 344,302		<hr/> 344,302	<hr/> 344,302	<hr/> <b>688,604</b>
Unreimbursed Drug Prescriptions <sup>1</sup>			4,000	4,000	<b>8,000</b>
Administrative Overhead			34,830	34,830	<b>69,660</b>
Average 1 Cost			<hr/> <b>383,132</b>	<hr/> <b>383,132</b>	
Total Projected 2 Year MOU Cost					<hr/> <b>766,264</b> <hr/>

Note 1: KMC will be providing drug prescriptions, which KMC will bill Medi-Cal as primary. If Medi-Cal does not cover drugs, KMC will bill Human Services 100% of the cost. The stated amount above of \$8,000 is an estimate only, actual cost may exceed estimate, which Human Services will be responsible for the actual cost incurred.

Note 2: Salaries Budgeted on 2% increase beginning next fiscal year per County and SEIU MOU. Benefits based on current benefits budgeted for Fiscal Year 2016. Benefits will be charge as of actual.

## EXHIBIT "D"

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("**Covered Entity**") and Kern County Department of Health Services ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of \_\_\_\_\_ ("**Effective Date**").

#### RECITALS

**WHEREAS**, Covered Entity is a "Covered Entity" as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, ("**HIPAA**"), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services ("**Secretary**"), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 ("**HIPAA Rules**");

**WHEREAS**, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information ("**PHI**");

**WHEREAS**, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the "**HITECH Act**") and its implementing regulations and guidance issued by the Secretary; and

**WHEREAS**, the Privacy and Security Rules (defined below) require Covered Entity and Business Associate to enter into a BAA that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

#### AGREEMENT

**NOW THEREFORE**, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

#### DEFINITIONS

"**Breach**" shall have the meaning given under [45 C.F.R. § 164.402](#).

"**Breach Notification Rule**" shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

"**Designated Record Set**" shall have the meaning given such term under [45 C.F.R. § 164.501](#).

"**Disclose**" and "**Disclosure**" mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

"**Electronic PHI**" or "**e-PHI**" means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

## EXHIBIT “D”

“**Protected Health Information**” and “**PHI**” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

“**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

“**Security Rule**” shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.

“**Services**” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the “**Underlying Agreement**”), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in [45 C.F.R. § 160.103](#).

“**Subcontractor**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

“**Unsecured PHI**” shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

“**Use**” or “**Uses**” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

“**Workforce**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#)

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA or the HITECH Act, as applicable.

### **OBLIGATIONS OF BUSINESS ASSOCIATE**

Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for

## EXHIBIT "D"

the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity.

Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

### Reporting Non-Permitted Use or Disclosure.

Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including

## EXHIBIT "D"

but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

Use of Subcontractors. Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

Accounting. Within thirty (30) days of receipt of a request from Covered Entity or an Individual for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within five (5) days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

Delegated Responsibilities. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

## EXHIBIT "D"

Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

### OBLIGATIONS OF COVERED ENTITY

#### Covered Entity's Obligations.

Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.

Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

### TERM AND TERMINATION

## EXHIBIT "D"

Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

### Termination of Underlying Agreement.

A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon thirty (30) calendar days written notice to Business Associate; or

Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

### Disposition of Protected Health Information Upon Termination or Expiration.

Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.

If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## MISCELLANEOUS

## EXHIBIT "D"

Regulatory References. A reference in this BAA to a section or other part of HIPAA, the HIPAA Rules, or the HITECH Act means, as of any point in time, the section or part as it may be amended or in effect at such time.

Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.

Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

Headings. The headings of the paragraphs and sections of this BAA are inserted solely for convenience of reference and are not a part or intended to govern, limit or aid in the construction of any term or provision hereof.

Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the aAgreementnt of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security.

Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure

## EXHIBIT "D"

of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Kern County Department of Human  
Services  
P.O. Box 511  
Bakersfield, CA 93302  
Attn: Director

Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Business Associate obligations under this BAA.

Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.10 of this BAA shall survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

## EXHIBIT "D"

Interpretation. Any ambiguity in this BAA shall be interpreted to permit the Parties to comply with HIPAA, the HITECH Act, and the HIPAA Rules.

Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state. Any dispute between the Parties shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.

Assignment and Delegation. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.

Disclaimer. Neither Party represents or warrants that compliance by the other Party with this BAA, HIPAA, the HIPAA Rules, or the HITECH Act will be adequate or satisfactory for the other Party's own purposes. Each Party is solely responsible for its own decisions regarding the safeguarding of PHI.

Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

(Remainder of Page Intentionally Left Blank)

**EXHIBIT "D"**

The Parties hereto have executed this BAA as of the Effective Date.

**COVERED ENTITY:**

The Kern County Hospital Authority on behalf  
of Kern Medical Center

**BUSINESS ASSOCIATE:**

Kern County Department of Human Services

\_\_\_\_\_  
Title: Chief Executive Officer

\_\_\_\_\_  
Dena Murphy, Director

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

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

APPROVED AS TO FORM  
Office of County Counsel

APPROVED AS TO FORM:  
Office of County Counsel

By \_\_\_\_\_  
Shannon Hochstein  
Deputy County Counsel

By \_\_\_\_\_  
Gurujodha Khalsa,  
Chief Deputy County Counsel

**EXHIBIT "E"**

**ASSURANCE OF COMPLIANCE WITH  
THE KERN COUNTY DEPARTMENT OF HUMAN SERVICES**

**NONDISCRIMINATION IN STATE  
AND FEDERALLY ASSISTED PROGRAMS**

**Kern County Hospital Authority (HEREINAFTER "CONTRACTOR")**

CONTRACTOR HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended, and in particular Section 272.6; Title II of the Americans with Disabilities Act of 1990; Government Code (GC) Section 11135, as amended; California Code of Regulations (CCR) Title 22 Section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act; Section 1808 Removal of Barriers to Inter Ethnic Adoption Act of 1996 and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of race, color, national origin, political affiliation, religion, marital status, sex, age, or disability be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE CONTRACTOR HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the CONTRACTOR agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code Section 10605, or Government Code Section 11135-39, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the CONTRACTOR directly or through contract, license, or other provider services, as long as it receives federal or state assistance; and shall be submitted annually with the required Civil Rights Plan Update.

\_\_\_\_\_  
Date  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306  
Address of Contractor

\_\_\_\_\_  
Contractor's Signature



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

May 18, 2016

**SUBJECT: Proposal to receive and accept MOU between Kern County Hospital Authority and Kern County Department of Public Health (DPH).**

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

**Summary:**

Kern County Hospital Authority provides clinical services on behalf of DPH as outlined in the following Memorandum of Understanding regarding Public Health EMS Agreement.

The EMS Agreement obligates Kern Medical to serve as a base Hospital to County EMS for purposes of providing comprehensive emergency medical services as required under Title 22 of the California Code of Regulations.

**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority - County of Kern)**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2016, between the **Kern County Hospital Authority**, a county hospital authority which owns and operates Kern Medical Center (“Authority”) and the **County of Kern**, a political subdivision of the state of California, (“County”) which contains the constituent departments of the Kern County Public Health Services Department (“Public Health”) and Kern County Emergency Medical Services Division (each a “Party” and collectively the “Parties”).

**I.  
RECITALS**

(a) County is authorized, pursuant to Government Code sections 31000 and 53060, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(b) County requires the assistance of the Authority to provide services, as such services are unavailable from County resources; and

(c) Authority, by reason of its qualifications and experience for doing the type of work herein contemplated, agrees to provide such services on the terms and conditions set forth in this Agreement;

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 on the transfer of Kern Medical Center to the Authority, which is scheduled to occur on or about July 1, 2016 (the “Effective Date”), and shall end three (3) years later, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Authority.**

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

2.2 **Representations.** Authority makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Authority has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Authority does not

have any actual or potential interests adverse to County; and (iii) Authority 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.** County has relied upon the professional ability and training of Authority as a material inducement to enter into this Agreement. Authority 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 Authority's work by County shall not operate as a waiver or release.

3. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, Authority and County 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 the Parties provided under this Agreement. The Parties further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

4. **Assignment.** The Parties shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the written consent of the other Party. The Parties shall not assign any money due or which becomes due to a Party under this Agreement without the prior written approval of the other Party.

5. **Audits, Inspection and Retention of Records.** The Parties agree to maintain and make available to the other Party accurate books and records relative to all its activities under this Agreement. The Parties shall permit the other Party 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. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon the Parties herein.

6. **Authority to Bind.** It is understood that neither Party, in its performance of any and all duties under this Agreement, has no authority to bind the other Party to any agreements or undertakings.

7. **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.

8. **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.

9. **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.

10. **Compliance with Law.** The Parties shall observe and comply with all applicable County, 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.

11. **Compliance Program.** During the term of this Agreement, the Parties shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third-party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for Contractor's assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline Contractor's assigned personnel who violate Contractor's policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with the Parties. The Parties' assigned personnel shall demonstrate the existence of an internal compliance program or plan.

12. **Confidentiality.**

12.1 Each party recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to the other hereunder, it may have access to certain information of the other party that constitutes a trade secret or is otherwise confidential and constitutes valuable, special, and unique property. Each party acknowledges their mutual confidential relationship and each party's respective ownership of all proprietary and confidential information not generally available to the public or legally accessible from third parties relating to the respective businesses of the parties, including without limitation, business plans, marketing plans, statistical data and reports, pricing, reimbursement and other financial information relating to a party's ongoing business, treatment methods, and all quality assurance and utilization review information (the foregoing is collectively referred to as "Confidential Information"). Notwithstanding the foregoing, Confidential Information will not include information: (i) rightfully in the public domain or which hereafter becomes a part of the public domain (other than through a breach of this Agreement); (ii) required to be disclosed by law; (iii) that is independently

developed by the non-disclosing party; or (iv) that was learned by the non-disclosing party from a third party who did not impose a confidentiality obligation on such party. Each party hereto acknowledges and agrees that the receiving party may be provided access to Confidential Information solely to enable the parties to perform services as provided for or contemplated in this Agreement. Except as otherwise required by applicable law, each party agrees to hold the other party's Confidential Information in strictest confidence and not to disclose it or allow it to be disclosed directly or indirectly to any person or entity (other than persons employed or engaged by the recipient party who have a need to know such information and who are obligated by written agreement to maintain the confidentiality thereof) without the other party's prior written consent.

12.2 **Medical Records.** If applicable, 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.

12.3 **Protected Health Information.** The parties will comply with all federal and state laws governing the privacy, confidentiality and security of protected health information and medical information including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and implementing regulations ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder (the "HITECH Act"), 42 CFR Part 2, and applicable California privacy, confidentiality and security laws and regulations, all as amended from time to time. The parties agree and to consult and cooperate with one another to assure appropriate and consistent handling of protected health information and medical information. The provisions of this paragraph shall survive termination of this Agreement. The Authority also agrees to abide by the terms of the HIPAA Business Associate Agreement attached hereto as **Exhibit D** and made a part hereof.

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. Authority and County 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. Authority and County 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. **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.

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

18. **Indemnification and Hold Harmless.** The Parties agree to indemnify, defend and hold harmless the other Party and its agents, board members, elected and appointed officials and officers, employees, 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 County Counsel and counsel retained by the Party, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of the other Party or its officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. 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; and any workers’ compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of the Party by any person or entity.

19. **Independent Contractor.** In the performance of the services under this Agreement, the Parties shall be, and acknowledges that the other Party is in fact and law, an independent contractor and not an agent or employee of the other Party. Each Party has and retains the right to exercise full supervision and control over the manner and methods of providing services to the other Party under this Agreement. Each Party retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting the Party in the provision of services under this Agreement. With respect to a Party’s employees, if any, the Party 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.

20. **Insurance.** Each party shall maintain, at its own expense, worker’s compensation with statutory limits, commercial, general and professional liability insurance or self-insurance for bodily injury, death

and property loss and damage (including coverage for product liability, completed operations, contract liability and personal injury liability) for claims, lawsuits or damages arising out of its performance under this Agreement or the negligent or otherwise wrongful acts or omissions by such party or any of its employees or agents. With the exception of worker's compensation insurance, all such policies of insurance shall provide minimum limits of liability in the amount of one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) annual aggregate. If such coverage is provided on a claims-made basis, such insurance shall continue through the later of the expiration or cancellation of such policy or the termination, expiration or completion of this Agreement and upon the termination, expiration or completion thereof, or the expiration or cancellation of the insurance, such party shall purchase or arrange for the purchase of either an unlimited reporting endorsement "Tail Coverage" or "Prior Acts" coverage with a retroactive date on or prior to the Effective Date of this Agreement, whichever is earlier, for a period of not less than five (5) years following the termination, expiration or completion thereof. Upon request of a party, a certificate of insurance evidencing the existence of all coverage required hereunder shall be provided.

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

22. **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 County 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 the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

23. **Non-appropriation.** The Parties 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, the terminating Party will be released from any further financial obligation to the other Party, 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. The terminated Party will be given 30 days' prior written notice in the event that a Party requires such an action.

24. **Nondiscrimination.** Neither Party, nor any officer, agent, employee, servant or subcontractor of Party 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.

25. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other knowingly (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement.

26. **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 County: Kern County Public Health Services Department  
1800 Mount Vernon Avenue  
Bakersfield, California 93306  
Attn: Contracts Unit

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

27. **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.

28. **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.

29. **Termination.**

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

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

29.3 **Immediate Termination.** Notwithstanding the foregoing, the Parties shall have the right to terminate this Agreement effective immediately after giving written notice to the other Party, for any of the following reasons: (i) a Party determines that the other Party does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by the other Party in the providing of services may result in civil, criminal, or monetary penalties against the Party;

(iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which the Party is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by the other Party which causes material harm to the Party; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by the other Party against the Party; (vi) the loss or threatened loss of the Party's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of the other Party; or (vii) the failure of a Party to cure a default within the time allowed in section 29.1.

30. **Effect of Termination.**

30.1 **Payment Obligations.** In the event of termination of this Agreement for any reason, the terminating Party shall have no further obligation to pay for any services rendered or expenses incurred by the other Party after the effective date of the termination, and the other Party shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

31. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

**[Signatures Follow on Next Page]**

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Supervisors

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
Public Health Services Department

APPROVED AS TO CONTENT:  
Kern Medical Center

By \_\_\_\_\_  
Matthew Constantine  
Director of Public Health Services

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
Office of County Counsel

APPROVED AS TO FORM:  
Office of County Counsel

By \_\_\_\_\_  
Chief Deputy

By \_\_\_\_\_  
Deputy

## **EXHIBIT "A"**

### **Services to be rendered:**

Public Health, Authority, and EMS shall provide the following services:

#### **A. EMS Base Hospital Agreement**

1. Authority shall:

- a. Serve as a base Hospital to EMS to provide basic or comprehensive emergency medical services pursuant to the provisions of Title 22, Article 5., Sections 70351-70369 of the California Code of Regulations, or have been granted approval by EMS' Medical Director for utilization as a base hospital pursuant to the provisions of Chapter 6, Article 1, Section 1798.100 of the California Health and Safety Code.
- b. Provide, properly utilize, and maintain paging/hailing devices as specified by EMS.
- c. Provide telecommunications equipment capable of direct two-way voice communications and of receiving telemetry transmission, and recording such communications and transmissions from EMT-P field units, as approved by EMS.
- d. Have a physician licensed in the State of California, and experienced in emergency medical care, assigned to the Emergency Department (ED), and available at all times to provide immediate medical direction to the mobile intensive care nurse or EMT-P personnel. This physician shall have experience in and knowledge of base hospital radio operations and EMS policies, procedures, and protocols.
- e. Designate a base hospital Medical Director or ED Chair, who shall be a physician on the hospital staff, licensed in the State of California, who is certified or prepared for certification by the American Board of Emergency Medicine. The requirement of board certification may be waived by the Medical Director or Department Chair when either determines that an individual with these qualifications is not available. The physician shall be regularly assigned to the ED, have experience in and knowledge of base hospital radio operations and EMS policies, procedures, and protocols, and shall be responsible for the supervision of EMT-P patient care practices, including review of patient care records, and personnel involved. The base hospital medical director or ED Chair shall be responsible for reporting deficiencies in patient care to EMS as specified by EMS.
- f. Provide a minimum of one EMS authorized mobile intensive care nurse in the ED at all times. After completion of training, each mobile intensive care nurse shall be authorized to provide medical direction via radio telecommunication to EMT-P personnel. One mobile intensive care nurse with experience in and knowledge of base hospital radio operations and EMS policies, procedures, and protocols shall be appointed by Authority as the pre-hospital liaison nurse to assist the base hospital Medical Director or Department Chair in the supervision of EMT-P patient care practices.
- g. Provide and support in accordance with the policies and procedures of EMS, training programs for the EMT-P and mobile intensive care nurses. Continuing education programs shall include, but are not limited to the following:
  - i. A minimum of one base hospital meeting per year
  - ii. A minimum of one tape review per year
  - iii. A minimum of one American Heart Association certified Advanced Cardiac Life Support (ACLS) course per year, enrollment open to physicians, registered nurses, EMT-P's and other licensed patient care personnel.

- h. Provide clinical training in both the Operating Room (Anesthesiology) and the ED for EMT-P trainees, as mutually agreed upon by EMS and Authority.
- i. Provide training of mobile intensive care nurses, as mutually agreed upon by EMS and Authority
- j. Maintain and upon written request make available to EMS all specified patient records for the monitoring and evaluation of all programs, systems, and projects relevant to pre-hospital patient care for EMS system quality improvement.
- k. Pay all certification and recertification fees required by EMS for certification as an EMT-P base hospital.
- l. Comply with all applicable federal, state and local laws and regulations and Department regulations, ordinances, policies and procedures, and assure that its emergency department, physicians, nurses and other employees and agents also comply with the same. Failure to comply with such applicable laws, regulations, and ordinances may be grounds for termination of this Agreement by EMS. Should Authority fail to comply with any of the laws, regulations, or ordinances after ten (10) days' notice from EMS, EMS may immediately terminate this Agreement.

**EXHIBIT “B”  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and Kern County Public Health Services Department (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of \_\_\_\_\_ (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, Covered Entity is a “Covered Entity” as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, (“**HIPAA**”), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 (“**HIPAA Rules**”);

**WHEREAS**, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information (“**PHI**”);

**WHEREAS**, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the “**HITECH Act**”) and its implementing regulations and guidance issued by the Secretary; and

**WHEREAS**, the Privacy and Security Rules (defined below) require Covered Entity and Business Associate to enter into a BAA that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

**DEFINITIONS**

“**Breach**” shall have the meaning given under [45 C.F.R. § 164.402](#).

“**Breach Notification Rule**” shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

“**Designated Record Set**” shall have the meaning given such term under [45 C.F.R. § 164.501](#).

“**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

“**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

“**Protected Health Information**” and “**PHI**” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

“**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

“**Security Rule**” shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.

“**Services**” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the “**Underlying Agreement**”), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in [45 C.F.R. § 160.103](#).

“**Subcontractor**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

“**Unsecured PHI**” shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

“**Use**” or “**Uses**” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

“**Workforce**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#)

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA or the HITECH Act, as applicable.

## **OBLIGATIONS OF BUSINESS ASSOCIATE**

Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as

Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity.

Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

Reporting Non-Permitted Use or Disclosure.

Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the

Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. § 164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

Use of Subcontractors. Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

Accounting. Within thirty (30) days of receipt of a request from Covered Entity or an Individual for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within five (5) days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

Delegated Responsibilities. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limits its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

## **OBLIGATIONS OF COVERED ENTITY**

### Covered Entity's Obligations.

Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.

Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

## **TERM AND TERMINATION**

Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

### Termination of Underlying Agreement.

A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon thirty (30) calendar days written notice to Business Associate; or

Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

#### Disposition of Protected Health Information Upon Termination or Expiration.

Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.

If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

### **MISCELLANEOUS**

Regulatory References. A reference in this BAA to a section or other part of HIPAA, the HIPAA Rules, or the HITECH Act means, as of any point in time, the section or part as it may be amended or in effect at such time.

Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.

Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

Headings. The headings of the paragraphs and sections of this BAA are inserted solely for convenience of reference and are not a part or intended to govern, limit or aid in the construction of any term or provision hereof.

Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security.

Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity

instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Kern County Public Health Services  
Department  
1800 Mount Vernon Avenue  
Bakersfield, California 93306  
Attn: Emergency Medical Services  
Division

Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Business Associate obligations under this BAA.

Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.10 of this BAA shall survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

Interpretation. Any ambiguity in this BAA shall be interpreted to permit the Parties to comply with HIPAA, the HITECH Act, and the HIPAA Rules.

Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state. Any dispute between the Parties shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.

Assignment and Delegation. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.

Disclaimer. Neither Party represents or warrants that compliance by the other Party with this BAA, HIPAA, the HIPAA Rules, or the HITECH Act will be adequate or satisfactory for the other Party's own purposes. Each Party is solely responsible for its own decisions regarding the safeguarding of PHI.

Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

The Parties hereto have executed this BAA as of the Effective Date.

**COVERED ENTITY:**

The Kern County Hospital Authority on behalf of Kern Medical Center

**BUSINESS ASSOCIATE:**

Kern County Public Health Services Department

\_\_\_\_\_  
Title: Chief Executive Officer

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

\_\_\_\_\_  
Title: Director of Public Health Services

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



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

May 18, 2016

**SUBJECT: Proposal to receive and accept MOU between Kern County Hospital Authority and Kern County Department of Public Health (DPH).**

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

**Summary:**

Kern County Hospital Authority provides clinical services on behalf of DPH as outlined in the following Memorandum of Understanding regarding Public Health Probation Agreement.

The Probation Agreement outlines additional services on behalf of DPH that Kern Medical Hospital Authority has agreed to provide including:

- STD Screening
- HIV Educational Services
- Pre-Employment Chest Radiographs
- Filing of Birth Certificates in AVSS/NET database
- Store emergency preparedness assets
- Deploy Emergency Response and Surge Capacity Resources
- Provide Access to Electronic Medical Records

**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority - County of Kern)**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2016, between the **Kern County Hospital Authority**, a county hospital authority which owns and operates Kern Medical Center (“Authority”) and the **County of Kern**, a political subdivision of the state of California, (“County”) which contains the constituent department of the Kern County Department of Public Health (“Public Health”) (each a “**Party**” and collectively the “**Parties**”).

**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) County is authorized, pursuant to Government Code sections 31000 and 53060, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and
- (c) Both Authority and County requires the assistance of the other Party to provide services, as such services are unavailable from Authority and County resources, and the Parties agrees to provide such services on the terms and conditions set forth in this Agreement;

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 on the transfer of Kern Medical Center to the Authority, which is scheduled to occur on or about July 1, 2016 (the “Effective Date”), and shall end three (3) years later, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.
- 2. **Obligations of Authority.**
  - 2.1 **Specified Services.** Authority shall perform the services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.
  - 2.2 **Representations.** Authority makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Authority has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Authority does not

have any actual or potential interests adverse to County; and (iii) Authority 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. County has relied upon the professional ability and training of Authority as a material inducement to enter into this Agreement. Authority 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 Authority's work by County shall not operate as a waiver or release.

### 3. Obligations of County.

3.1 Specified Services. County shall perform the services set forth in Exhibit "A," attached hereto. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

3.2 Representations. County makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) County has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) County does not have any actual or potential interests adverse to Authority; and (iii) County shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

3.3 Standard of Care. Authority has relied upon the professional ability and training of County as a material inducement to enter into this Agreement. County 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 County's work by Authority shall not operate as a waiver or release.

3.4 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. County 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 Fees and Charges. As consideration for the services provided by Parties hereunder, the Parties will pay in accordance with the Compensation rates set forth in Exhibit "A," attached hereto. All services are payable in arrears.

4.2 Taxes. Parties agree 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.

4.3 **Invoices.** Invoices for payment shall be submitted in a form approved by County and list each service performed. Invoices and receipts shall be sent to County 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.

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, Authority and County 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 the Parties provided under this Agreement. The Parties further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **Assignment.** The Parties shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the written consent of the other Party. The Parties shall not assign any money due or which becomes due to a Party under this Agreement without the prior written approval of the other Party.

7. **Audits, Inspection and Retention of Records.** The Parties agree to maintain and make available to the other Party accurate books and records relative to all its activities under this Agreement. The Parties shall permit the other Party 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. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon the Parties herein.

8. **Authority to Bind.** It is understood that neither Party, in its performance of any and all duties under this Agreement, has no authority to bind the other Party to any agreements or undertakings.

9. **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.

10. **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.

11. **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.

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

13. **Compliance Program.** During the term of this Agreement, the Parties shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third-party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for Contractor's assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline Contractor's assigned personnel who violate Contractor's policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with the Parties. The Parties' assigned personnel shall demonstrate the existence of an internal compliance program or plan.

14. **Confidentiality.**

14.1 Each party recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to the other hereunder, it may have access to certain information of the other party that constitutes a trade secret or is otherwise confidential and constitutes valuable, special, and unique property. Each party acknowledges their mutual confidential relationship and each party's respective ownership of all proprietary and confidential information not generally available to the public or legally accessible from third parties relating to the respective businesses of the parties, including without limitation, business plans, marketing plans, statistical data and reports, pricing, reimbursement and other financial information relating to a party's ongoing business, treatment methods, and all quality assurance and utilization review information (the foregoing is collectively referred to as "Confidential Information"). Notwithstanding the foregoing, Confidential Information will not include information: (i) rightfully in the public domain or which hereafter becomes a part of the public domain (other than through a breach of this Agreement); (ii) required to be disclosed by law; (iii) that is independently developed by the non-disclosing party; or (iv) that was learned by the non-disclosing party from a third party who did not impose a confidentiality obligation on such party. Each party hereto acknowledges and agrees that the receiving party may be provided access to Confidential Information solely to enable the parties to perform services as provided for or contemplated in this Agreement. Except as otherwise required by applicable law, each party agrees to hold the other party's Confidential Information in

strictest confidence and not to disclose it or allow it to be disclosed directly or indirectly to any person or entity (other than persons employed or engaged by the recipient party who have a need to know such information and who are obligated by written agreement to maintain the confidentiality thereof) without the other party's prior written consent.

14.2 **Medical Records.** If applicable, 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.

14.3 **Protected Health Information.** The parties will comply with all federal and state laws governing the privacy, confidentiality and security of protected health information and medical information including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and implementing regulations ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder (the "HITECH Act"), 42 CFR Part 2, and applicable California privacy, confidentiality and security laws and regulations, all as amended from time to time. The parties agree and to consult and cooperate with one another to assure appropriate and consistent handling of protected health information and medical information. The provisions of this paragraph shall survive termination of this Agreement. The Authority also agrees to abide by the terms of the HIPAA Business Associate Agreement attached hereto as **Exhibit D** and made a part hereof.

15. **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.

16. **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. Authority and County 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. Authority and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

17. **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.

18. **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.

19. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to the Parties 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.

20. **Indemnification and Hold Harmless.** The Parties agree to indemnify, defend and hold harmless the other Party and its agents, board members, elected and appointed officials and officers, employees, 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 County Counsel and counsel retained by the Party, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of the other Party or its officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. 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; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of the Party by any person or entity.

21. **Independent Contractor.** In the performance of the services under this Agreement, the Parties shall be, and acknowledges that the other Party is in fact and law, an independent contractor and not an agent or employee of the other Party. Each Party has and retains the right to exercise full supervision and control over the manner and methods of providing services to the other Party under this Agreement. Each Party retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting the Party in the provision of services under this Agreement. With respect to a Party's employees, if any, the Party 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.

22. **Insurance.** Each party shall maintain, at its own expense, worker's compensation with statutory limits, commercial, general and professional liability insurance or self-insurance for bodily injury, death and property loss and damage (including coverage for product liability, completed operations, contract liability and personal injury liability) for claims, lawsuits or damages arising out of its performance under this Agreement or the negligent or otherwise wrongful acts or omissions by such party or any of its employees or agents. With the exception of worker's compensation insurance, all such policies of insurance shall provide minimum limits of liability in the amount of one million dollars (\$1,000,000) per

claim and three million dollars (\$3,000,000) annual aggregate. If such coverage is provided on a claims-made basis, such insurance shall continue through the later of the expiration or cancellation of such policy or the termination, expiration or completion of this Agreement and upon the termination, expiration or completion thereof, or the expiration or cancellation of the insurance, such party shall purchase or arrange for the purchase of either an unlimited reporting endorsement "Tail Coverage" or "Prior Acts" coverage with a retroactive date on or prior to the Effective Date of this Agreement, whichever is earlier, for a period of not less than five (5) years following the termination, expiration or completion thereof. Upon request of a party, a certificate of insurance evidencing the existence of all coverage required hereunder shall be provided.

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

24. **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 County 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 the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

25. **Non-appropriation.** The Parties 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, the terminating Party will be released from any further financial obligation to the other Party, 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. The terminated Party will be given 30 days' prior written notice in the event that a Party requires such an action.

26. **Nondiscrimination.** Neither Party, nor any officer, agent, employee, servant or subcontractor of Party 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.

27. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement.

29. **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 County: Kern County Public Health Services Department  
1800 Mount Vernon Avenue  
Bakersfield, California 93306  
Attn: Contracts Unit

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

30. **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.

31. **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.

32. **Termination.**

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

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

32.3 **Immediate Termination.** Notwithstanding the foregoing, the Parties shall have the right to terminate this Agreement effective immediately after giving written notice to the other Party, for any of the following reasons: (i) a Party determines that the other Party does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by the other Party in the providing of services may result in civil, criminal, or monetary penalties against the Party; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which the Party is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by the other Party which causes material harm to the Party; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by the other Party against the Party; (vi) the loss or threatened loss of the Party's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the

actions of the other Party; or (vii) the failure of a Party to cure a default within the time allowed in section 32.1.

33. **Effect of Termination.**

33.1 **Payment Obligations.** In the event of termination of this Agreement for any reason, the terminating Party shall have no further obligation to pay for any services rendered or expenses incurred by the other Party after the effective date of the termination, and the other Party shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

34. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

**[Signatures Follow on Next Page]**

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Supervisors

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
Public Health Services Department

APPROVED AS TO CONTENT:  
Kern Medical Center

By \_\_\_\_\_  
Matthew Constantine  
Director of Public Health Services

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
Office of County Counsel

APPROVED AS TO FORM:  
Office of County Counsel

By \_\_\_\_\_  
Chief Deputy

By \_\_\_\_\_  
Deputy

## EXHIBIT “A”

### Services to be rendered:

Public Health and Authority shall provide the following services:

#### A. HIV Retention Program

1. Public Health shall:
  - a. Provide an orientation process for new HIV patients at Authority and patients newly diagnosed with HIV seeking services at Authority.
  - b. Provide educational services to patients about their HIV care plan and establish proper expectations of care for the patient.
  - c. Schedule appointments and lab reminders. Patients shall be called prior to their appointment. Lab information shall be obtained prior to the patient's appointment. Patients who missed appointments shall be called to determine the cause for the missed appointment and the appointment shall be rescheduled.
  - d. Provide assistance to patients to reduce barriers to care (e.g., transportation, food services, etc.).
  - e. Assist patients in securing financial assistance.
  - f. Assist in streamlining transitions between payer/providers.
  - g. Be aware of all Authority Program compliance measures and ensure patients are meeting the HIV care plan standards.
  - h. Compile data components required and enter into the Authority's EMR as directed by the Authority. Complete any additional monthly reports as directed by the Authority.
  - i. Utilize established enrollment form and screening process for new Program participants.
  - j. Follow and update all policies and procedures for tasks as mutually agreed upon.
  - k. Work closely with all Authority staff and providers to provide the best care possible for HIV patients at Authority.
2. Authority shall:
  - a. Provide overall design, management and oversight of the program
  - b. Provide overall management and oversight of the HIV clinic, staff and providers
  - c. Provide a Behavioral Health Coordinator to conduct mental health screenings in the HIV clinic and submit for appropriate mental health and/or substance abuse referrals
  - d. Provide medication management and medication education by a clinical pharmacist
  - e. Provide access to all applicable Authority software programs to run the Program effectively
  - f. Provide a quarterly Program evaluation
3. Compensation:
  - a. For services provided by Public Health hereunder, Authority shall compensate Public Health up to 50% of the salaries and benefits for one Medical Investigator position. Public Health Services will invoice Authority monthly. Authority shall prepare and submit payment to the Auditor-Controller. All services are payable in arrears.
  - b. The maximum payable to Public Health by Authority for the HIV Retention Program will not exceed \$50,000 per fiscal year. The maximum payable may be adjusted at the sole discretion of Authority depending upon quarterly review of the Program by Authority.

#### B. Chest Radiograph Program

1. Authority shall:
  - a. Provide Chest Radiograph (Chest X-Ray or Radiograph) services for persons referred to Authority by Public Health. As specified in the referral, Authority shall take anterior-posterior (A/P), lateral, or both A/P and lateral exposures of the referred individuals and

- provide Public Health with written interpretations of these radiographs.
- b. Provide Public Health with written interpretations of radiographs supplied by Public Health taken at medical facilities other than Authority.
- c. Provide electronic access to Public Health's Health Officer for review of radiographs taken.
- d. Store radiographs produced by Authority for a period of no less than five (5) years, however, all images shall remain the property of Authority.

2. Compensation:

- a. Public Health shall compensate Authority for Program services at the following rates:
  - i. A/P Exposure and Report \$60
  - ii. Lateral Exposure and Report \$60
  - iii. A/P and Lateral Exposure and Report \$80
  - iv. Report only for a Referred Radiograph \$30
- b. For services provided by Authority hereunder, Public Health shall prepare and submit payment to the Authority Department of Finance as invoiced by Authority.

**C. Agreement to File Birth Certificates using Automated Vital Statistics System ("AVSS/NET")**

1. Public Health Shall:

- a. Cover the cost of Hospital's AVSS/NET software license fees and technical assistance fees.
- b. Provide phone numbers to access AVSS/NET technical assistance during Public Health's regular hours of operation.

2. Authority Shall:

- a. Accept AVSS/NET on an "as-is, with all defects" basis for electronic printing and filing of birth certificates.
- b. Maintain continuous broadband Internet access with Port 22 enabled at a location convenient to the production of birth certificates for the AVSS/NET workstation.
- c. Provide a local area network (LAN) technician to maintain Internet access and the AVSS/NET workstation. This includes, but is not limited to, troubleshooting, network security, virus checking, and reinstalling software when necessary.
- d. Ensure the AVSS/NET workstation and printer is maintained in working order.
- e. Cover in full any costs to maintain the AVSS/NET workstation and printer in proper working order including any costs for repairs, supplies, or costs for replacement not covered by the manufacturer's warranty during the term of this Agreement and upon expiration hereof.
- f. Call AVSS/NET help desk or Department of Public Health Data Management help desk for any technical assistance.
- g. Assign an administrator to protect AVSS/NET from all unauthorized uses.

3. Usage:

- a. Authority shall be entitled to use the AVSS/NET only on the workstation where Public Health installed the AVSS/NET. Hospital shall not copy the program form, format, or content in any manner.

4. Compensation:

- a. Other than as stated above, neither party to the Agreement shall be obligated to pay any monetary compensation to the other for responsibilities under this Agreement.

**D. Emergency Preparedness Assets Storage**

1. Whereas:

- a. Public Health obtained assets and/or grant funding to purchase preparedness assets, including caches of emergency preparedness assets for emergency medical response and

- medical surge capacity
- b. Public Health has obtained Strategic National Stockpile ("SNS") medications and vaccines for emergency response from the State of California
- c. Public Health desires to engage Authority to provide services as specified below and Authority by reason of Authority's qualifications, experience, and facilities for doing the type of work herein contemplated, has offered to provide the required services on the terms set forth herein
- d. Public Health desires to establish a formal working relationship with Authority for pandemic influenza preparedness and prevention planning and response in the event of a pandemic influenza, flooding or any other disaster or emergency
- e. Authority has agreed to store, maintain, and deploy the equipment and supplies listed in this Agreement in accordance with federal, State, and County requirements.

2. Authority Shall:

- a. Maintain the supplies and equipment listed herein in a safe and secure location on Authority's premises and shall conduct an annual inventory of the supplies. Authority opted to receive one (1) supply cache.
- b. Where possible, store cache in a temperature controlled warehouse between 59° and 86° Fahrenheit. Total warehouse space needed varies based on the presence and type of racking system. The pallets may be double stacked but the pallet containing IV Fluid must be on the bottom as it weighs approximately one thousand (1,000) pounds and will crush the other pallets.
- c. Maintain the equipment and supplies such that items are available for off-site emergency deployment with an advanced notice of twenty-four (24) hours.
- d. Advise Public Health in advance of any pre-planned movement of the supplies and equipment to an off-site location for any period exceeding twenty-four (24) hours.
- e. Advise Public Health if the supplies and equipment become inaccessible for any period exceeding twenty-four (24) hours.
- f. Educate staff and maintain competency in the proper use and maintenance of the supplies, and equipment provided pursuant to this Agreement
- g. Provide Public Health with the following routine reports:
  - i. A copy of the annual inventory report conducted as required by Section 2.a., above, due on or before November 1 of each year; and
  - ii. On an annual basis, the name and phone number of the staff person responsible for maintenance, security, inventory, and deployment of the supplies and equipment, and update Public Health regarding any changes.
- h. Authority shall appropriately dispose of the medical surge assets when they reach the shelf life expiration date at no cost to Public Health;
- i. Return all supplies and equipment to Public Health upon termination of this Agreement if so requested by Public Health; and
- j. Participate in the Kern County Disaster Medical Planning Group (DMPG) each month in Kern County and support emergency preparedness planning.

3. Public Health Shall:

- a. Properly administer the grant programs in which the items listed herein were acquired, and serve as the point of contact with the various grant agencies;
- b. Notify Hospital of any product recalls of medical surge assets that KCPHSD learns about and relay to Hospital manufacturer instructions for such recalls;
- c. Monitor Hospital's compliance with this Agreement for purposes of grant administration;
- d. Provide supplies and equipment to replace used and expired supplies and equipment, to the

extent possible, with future grant resources upon request from Authority. Authority understands and acknowledges that future grant funding for replacing supplies and equipment is unlikely to occur.

**E. Deployment of Emergency Response and Surge Capacity Resources Obtained Through Grants**

1. Authority Shall:

- a. Vehicle
  - i. Maintain vehicle, supplies and equipment stored therein in a safe and secure location on Hospital premises.
  - ii. Provide routine vehicle maintenance, cleaning, and accessibility of the vehicle including if necessary, replacement of tires or other appurtenances.
  - iii. Remove graffiti or re-paint any portion of the vehicle covered by graffiti
  - iv. Advise Public Health if the vehicle becomes non-operational for any period exceeding twenty-four (24) hours; and
  - v. Repair any damage to the vehicle and replace lost or damaged equipment while the vehicle and equipment are under control of the Authority.
- b. Maintenance, Storage, Inventory Control and Reporting
  - i. Conduct an annual inventory of supplies and equipment stored within the vehicle and warehoused by Authority;
  - ii. Submit a copy of the annual inventory report including disposition of lost or stolen, expired, broken, and disposed items to Public Health no later than November 1 of each year.
  - iii. Provide the name and phone number of the Authority staff person(s) responsible for maintenance, security, inventory, and deployment of the vehicle, and update Public Health regarding any changes; and
  - iv. Authority will maintain equipment in at least as good of condition as the equipment was in when it was delivered to the authority. Authority shall replace and/or destroy, as appropriate, those supplies and equipment that have either expired or no longer function as intended and use and replenish the pharmaceuticals, medical supplies, and equipment stored in the vehicle or warehoused by Authority on a routine basis when possible to maintain inventory shelf life before expiration; and
  - v. Authority will appropriately dispose of supplies and equipment when they reach the shelf life expiration date at no cost to Public Health.
- c. Availability, Relocation, Termination
  - i. Ensure the vehicle, and supplies and equipment stored therein, and supplies and equipment warehoused by Authority are available for deployment off-site or as mutual aid sharing of assets during a declared emergency as directed by Public Health with an advanced notice of three (3) hours;
  - ii. Advise Public Health in advance of any pre-planned movement of the vehicle, supplies, and equipment to an off-site location for any period exceeding twenty-four (24) hours; and
  - iii. Return the vehicle, all supplies, and all equipment to Public Health upon termination of the agreement.
- d. Response Planning
  - i. Participate in the County Disaster Medical Planning Group ("DMPG") each month and support emergency preparedness planning; and
  - ii. Comply with the HPP grant requirement for coalition participation by agreeing to the DMPG Partner Participation Agreement.
- e. Training, Drills, and Exercises

- i. Educate staff and maintain competency in the proper use and maintenance of the vehicle, supplies, and equipment provided pursuant to the agreement;
      - ii. Provide training to staff and maintain competency in Hospital Incident Command ("HICS"), National Incident Management System ("NIMS"), Incident Command ("IC"), and Homeland Security Exercise and Evaluation Program ("HSEEP");
      - iii. Comply with requirements for conducting trainings, drills, exercises, preparing or updating plans and procedures, providing reports, incorporation of various communication methods, and timely submit to County within 14 days of request the Hospital Preparedness Program ("HPP") Hospital Data Elements information required for the HPP grant; and
      - iv. Provide timely submissions of emergency preparedness exercise and drill evaluations, After Action Reports ("AAR"), and Improvements Plans ("IP") as requested by County.
    - f. Purchase and Reimburse of Equipment and Supplies
      - i. Purchase and acquire supplies and equipment consistent with the pre-approved grant budget upon receipt of a Public Health approval letter for specific purchases;
      - ii. Authority understands and acknowledges future grant funding for purchasing supplies and equipment is limited; and
      - iii. Submit a Journal Voucher to Public Health and corresponding proof(s) of purchase in the form of a paid vendor invoice, paid purchase order, and/or completed agreement, and all associated packing slips or delivery receipts. Journal Voucher with proofs of purchase shall be submitted to Public Health no later than May 1 of the current year for reimbursement by Public Health.
2. Public Health Shall:
- a. Grant Programs
    - i. Properly administer the grant; and
    - ii. Serve as the point of contact with the various grant agencies.
  - b. Agreement Monitoring
    - i. Monitor Authority's compliance with the agreement for purposes of grant administration.
  - c. Vehicle
    - i. Facilitate the licensing and registration of the vehicle with the Department of Motor Vehicles, and supply Authority with copies of vehicle registration information; and
    - ii. Retain ownership and title to the vehicle.
  - d. Replacement Supplies and Equipment
    - i. Replace used and expired supplies and equipment to the extent possible with future grant resources; and
    - ii. Ensure Authority understands and acknowledges future grant funding for replacing supplies and equipment may likely not be available.
  - e. Reimbursement of Authority-Purchased Equipment and Supplies
    - i. Upon receipt of an invoice and proof(s) of purchase from Hospital, as described above, Public Health shall reimburse Authority for purchase of emergency response and surge capacity equipment and supplies consistent with the pre-approved grant budget. Department's contribution shall reimburse the exact amount as reported on the proof(s) of purchase and shall not exceed the pre-approved grant budgeted amount as listed in the Department approval letter for specific purchases.
3. Kern County Local Healthcare Coalition Partner Participation

- a. Authority joins, as a participating partner, the Kern County local healthcare coalition, a voluntary multidisciplinary, multi-agency body, to partner and collaborate with Kern County Public Health Services Department Emergency Medical Services/Emergency Preparedness Division to coordinate healthcare preparedness for all-hazard emergencies through mitigation, planning, response, and recovery.
  
- b. Authority's Role in the Kern County local healthcare coalition is to:
  - i. Designate a representative to actively participate in the Kern County local healthcare coalition meetings and activities;
  - ii. Participate and assist in defining roles and responsibilities for healthcare facilities regarding the top three hazards identified in the Medical Health Hazard Vulnerability Assessments (MHHVAs) and identify gaps in meeting capabilities needed to perform participant roles and responsibilities;
  - iii. Attend as many the Kern County local healthcare coalition meetings per fiscal year as is feasible;
  - iv. Participate in all aspects of the Statewide Medical Health Exercise; and
  - v. Participate in appropriate Hospital Preparedness Program (HPP) emergency preparedness trainings and exercises as they are made available.
  
- c. Public Health's Role in the Kern County local healthcare coalition is to:
  - i. During a disaster, promote communication, collaboration, and resource sharing among the Kern County local healthcare coalition members in accordance with the California Public Health and Medical Emergency Operations Manual (CA-EOM);
  - ii. Assume a leadership role in the Kern County local healthcare coalition by presiding over coalition meetings, creating and distributing meeting announcements and agendas, recording and distributing meeting minutes; and maintaining permanent archives of meeting minutes;
  - iii. Promote outreach to identify new Kern County local healthcare coalition partners, including but not limited to public and private medical, health, and skilled nursing service providers; community-based organizations; and governmental bodies, with an interest in the provision of healthcare in Kern County during disasters or other states of emergency; and
  - iv. Facilitate training and distribution of equipment resources to DMPG partners through the Hospital Preparedness Program (HPP) grant.
  
- d. Kern County Local Healthcare Coalition role:
  - i. The Kern County local healthcare coalition is to provide recommendations regarding healthcare preparedness for all-hazard emergencies in Kern County. As such, the Kern County local healthcare coalition is not a policy-making entity.
  - ii. This advisory role does not obligate the Kern County local healthcare coalition or any member to perform any specific administrative, fiscal, or disciplinary function.

- iii. The Kern County local healthcare coalition, in keeping with its purpose, shall not encumber itself with any binding contract or fiduciary role.
- iv. Neither the Kern County local healthcare coalition nor its members will directly receive or distribute HPP grant funds.
- v. Other than potential loss of eligibility for HPP grant funding, any member of the Kern County local healthcare coalition can withdraw participation at any time for any reason without prejudice or penalties.

By participating in the Kern County local healthcare coalition, HPP-qualified healthcare entities (hospital, clinic, LEMSA, skilled nursing facility) may be eligible to receive Hospital Preparedness Program grant funding.

**F. Access to Electronic Health Record (EHR)**

- 1. **Authority shall provide:**
  - a. Public Health access to the OpenVista CareVue computer system
  - b. Notification to Public Health in the event Authority changes EHR vendor
- 2. **Public Health shall:**
  - a. Complete an Authority Access Request Form ("ARF") when requesting access to Authority's electronic data systems.

**G. LTV 1200 Ventilator Acceptance**

- 1. Whereas:
  - a. Authority received a quantity of 20 LVT Ventilators with Accessory Packs (hereinafter referred to as "Ventilators") from Public Health through the California Department of Public Health (CDPH)
  - b. The Ventilators are to be stored or maintained in working order for the deployment during local, State, or Federal emergencies.
- 2. Authority Shall:
  - a. Maintain the ventilators per the manufacturer's preventative maintenance (PM) schedule, or mothball (store without maintenance) them with a provision to quickly refurbish them immediately prior to use during an emergency. CDPH encourages hospitals to rotate these ventilators into normal use as the preferred method of storing and maintaining them.
    - i. Service and PM can be performed by either the vendor, or by certified biomedical technicians or lab technicians.
  - b. Maintain the ventilators as "surplus" (additions to any ventilator supply currently on hand). Ventilators may not be used to supplant current inventories.
  - c. Authority is a caretaker of these assets and agrees to share them, if available at the time, with neighboring facilities and/or counties as part of the California Mutual Aid System. When an event occurs requiring additional emergency ventilators, the county, the region, or CDPH will poll the authority to determine availability of these assets.
- 3. Public Health Shall:
  - a. Be responsible for ownership following transfer of the ventilators from CDPH.
  - b. Be responsible for arrangements for storage, maintenance, and used during emergency situations, including delegation of this responsibility to the Authority.
  - c. Maintain master inventory of all ventilators with accessories in the county that have been transferred from CDPH.

- d. Coordinate mutual aid sharing of assets during a declared emergency.
- e. If storing at county facility, either maintain the ventilators or store them in a mothballed condition

**EXHIBIT “B”  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and Kern County Department of Public Health (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of \_\_\_\_\_ (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, Covered Entity is a “Covered Entity” as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, (“**HIPAA**”), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 (“**HIPAA Rules**”);

**WHEREAS**, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information (“**PHI**”);

**WHEREAS**, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the “**HITECH Act**”) and its implementing regulations and guidance issued by the Secretary; and

**WHEREAS**, the Privacy and Security Rules (defined below) require Covered Entity and Business Associate to enter into a BAA that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

**DEFINITIONS**

“**Breach**” shall have the meaning given under [45 C.F.R. § 164.402](#).

“**Breach Notification Rule**” shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

“**Designated Record Set**” shall have the meaning given such term under [45 C.F.R. § 164.501](#).

“**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

“**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

“**Protected Health Information**” and “**PHI**” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

“**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

“**Security Rule**” shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.

“**Services**” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the “**Underlying Agreement**”), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in [45 C.F.R. § 160.103](#).

“**Subcontractor**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

“**Unsecured PHI**” shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

“**Use**” or “**Uses**” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

“**Workforce**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#)

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA or the HITECH Act, as applicable.

## **OBLIGATIONS OF BUSINESS ASSOCIATE**

Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as

Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity.

Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

Reporting Non-Permitted Use or Disclosure.

Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the

Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. § 164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

Use of Subcontractors. Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

Accounting. Within thirty (30) days of receipt of a request from Covered Entity or an Individual for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within five (5) days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

Delegated Responsibilities. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limits its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

## **OBLIGATIONS OF COVERED ENTITY**

### Covered Entity's Obligations.

Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.

Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

## **TERM AND TERMINATION**

Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

### Termination of Underlying Agreement.

A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon thirty (30) calendar days written notice to Business Associate; or

Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

#### Disposition of Protected Health Information Upon Termination or Expiration.

Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.

If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

### **MISCELLANEOUS**

Regulatory References. A reference in this BAA to a section or other part of HIPAA, the HIPAA Rules, or the HITECH Act means, as of any point in time, the section or part as it may be amended or in effect at such time.

Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.

Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

Headings. The headings of the paragraphs and sections of this BAA are inserted solely for convenience of reference and are not a part or intended to govern, limit or aid in the construction of any term or provision hereof.

Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security.

Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity

instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Kern County Public Health Services  
Department  
1800 Mount Vernon Avenue  
Bakersfield, CA 93306

Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Business Associate obligations under this BAA.

Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.10 of this BAA shall survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

Interpretation. Any ambiguity in this BAA shall be interpreted to permit the Parties to comply with HIPAA, the HITECH Act, and the HIPAA Rules.

Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state. Any dispute between the Parties shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.

Assignment and Delegation. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.

Disclaimer. Neither Party represents or warrants that compliance by the other Party with this BAA, HIPAA, the HIPAA Rules, or the HITECH Act will be adequate or satisfactory for the other Party's own purposes. Each Party is solely responsible for its own decisions regarding the safeguarding of PHI.

Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

The Parties hereto have executed this BAA as of the Effective Date.

**COVERED ENTITY:**

The Kern County Hospital Authority on behalf of Kern Medical Center

**BUSINESS ASSOCIATE:**

Kern County Public Health Services Department

\_\_\_\_\_  
Title: Chief Executive Officer

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

\_\_\_\_\_  
Title: Director of Public Health Services

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



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

May 18, 2016

**SUBJECT: Proposal to receive and accept MOU between Kern County Hospital Authority and Kern County Department of Public Health (DPH).**

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

**Summary:**

Kern County Hospital Authority provides clinical services on behalf of DPH as outlined in the following Memorandum of Understanding regarding Public Health Transfer Agreement.

The Transfer Agreement outlines the role of Kern Medical as a Critical Care Center and General Trauma Center in maintaining availability to receive transfers from DPH facilities according to the terms of the agreement.

## INTERFACILITY TRANSFER AGREEMENT

This INTERFACILITY TRANSFER AGREEMENT (“Agreement”) is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between KERN COUNTY HOSPITAL AUTHORITY (“Medical Center”), a county hospital authority, which owns and operated Kern Medical Center (“KMC”), and the COUNTY OF KERN, a political subdivision of the state of California (“County”), which contains the constituent department of the Public Health Services Department (“Transferring Facility”). This Agreement shall serve as documentation of the arrangements, policies, and procedures governing the transfer of critically ill and/or injured patients between the above named institutions in order to facilitate timely transfer, continuity of care, and appropriate transport for these patients.

### RECITALS

A. Medical Center owns and operates an acute care hospital and related health care facilities located principally at 1700 Mount Vernon Avenue, Bakersfield, California 93306.

B. Transferring Facility operates Public Health facilities, as set forth in Exhibit “A” attached hereto and incorporated herein by this reference, located principally at 1800 Mount Vernon Avenue, Bakersfield, California 93306.

C. Transferring Facility recognizes that on certain occasions patients may require specialized care and services that may not be currently available at Transferring Facility (“Services”), and that optimal care of these patients requires transfer from the emergency department or inpatient services to a center with specialized critical care (“Specialized Referral Center”), which may include, without limitation, the following: (1) Critical Care Center; and (2) General Trauma Center.

D. The medical staff and administration of Transferring Facility have identified Medical Center as a Specialized Referral Medical Center having specialized staff and facilities for regional (tertiary) level care of critically ill and/or injured patients.

E. Transferring Facility and Medical Center desire to enter into an agreement to facilitate the transfer of patients from the Transferring Facility to Medical Center in order for patients of Transferring Facility to obtain Services not available at the Transferring Facility.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties enter into this Agreement on the following terms and conditions:

### ARTICLE I

#### TERM AND TERMINATION

1.01 Term. This Agreement shall become effective on the transfer of Kern Medical Center and related health resources from the County to the Authority, on or around July 1, 2016, and shall continue until terminated or changed by either institution.

1.02 Termination.

(a) This Agreement may be terminated by either party, without cause, by giving thirty (30) days' advanced written notice of its intention to terminate this Agreement.

(b) This Agreement may be terminated immediately by notice to the other party upon the occurrence of any of the following: (i) any material breach of this Agreement; (ii) any loss of licensure or certification which affects the ability of the subject party to perform its obligations under this Agreement; or (iii) any event beyond the control of either party (force majeure) which makes it impractical or unreasonable for either party to continue to abide by the terms and conditions of this Agreement.

(c) In the event that either party terminates this Agreement, each party shall remain liable for any of its obligations or liabilities arising from activities carried on by the party prior to the effective date of the termination.

ARTICLE II  
RESPONSIBILITIES OF MEDICAL CENTER

2.01 Maintenance of Critical Care or General Trauma Center. Medical Center agrees to maintain a regional (tertiary): (i) Critical Care Center; and (ii) General Trauma Center, that is equipped and staffed to provide a full range of medical and surgical Services for critically ill patients and/or trauma patients in accordance with Joint Commission ("Joint Commission") standards, and applicable California State and local Emergency Medical Services ("EMS") Agency standards for Critical Care Centers, and General Trauma Centers.

2.02 Acceptance of Transfers from Transferring Facility. Medical Center agrees to accept transfers of critically ill and injured patients from Transferring Facility if beds, personnel, and appropriate Services are available, if the transfer has been approved by the receiving physician, and if the transfer is consistent with current patient transfer laws.

2.03 Telephone and Education Consultation. Pursuant to applicable California State requirements for regional (tertiary) level approval and State Trauma System regulations, Medical Center shall provide twenty-four (24) hour telephone consultation services, and educational programs related to emergency, critical care, and/or trauma care that can be made available to community health professionals involved in such care.

ARTICLE III  
INDICATIONS FOR TRANSFERS

3.01 Request by Physician/Patient/Legal Representative. The parties acknowledge that the: (i) patient's attending physician; (ii) patient; or (iii) patient's legal representative, may request transfer to an alternate facility.

3.02 Examination of Patient by Transferring Physician. Prior to the patient's transfer, the transferring physician shall have examined the patient, documented the patient's condition, and determined that the patient requires a higher level of care than provided at Transferring Facility or requires specialized Services provided at Medical Center.

3.03 Determination that Transfer is in Best Interests of Patient. Prior to the patient's transfer, the transferring physician shall have evaluated the patient and determined that the transport is compatible with the patient's condition and is in the best interests of the patient's medical care.

#### ARTICLE IV TRANSFER ARRANGEMENTS

4.01 Request for Consultation and Transfer. Requests for consultation or transport team support and patient transfer to Medical Center shall be generated by telephone to:

Kern Medical Center  
Telephone No.: (661)706-6702  
Attention: Transfer Officer

4.02 Transferring Physician Consultation with Medical Center Physician. When it appears that a patient requires specialized Services or medical care beyond the scope of the services provided at Transferring Facility, the transferring physician shall contact an appropriate specialist at Medical Center to obtain consultation. The transferring physician, in conjunction with Medical Center consulting physician, shall be responsible for determining the need for admission to Medical Center. The consent of appropriately authorized staff at Medical Center to receive the patient shall be obtained prior to the patient's release from Transferring Facility and such consent shall be documented in the patient's medical record.

4.03 Arrangement of Patient Admission by Medical Center Physician. It shall be the responsibility of the receiving physician at Medical Center to arrange the admission of the patient to Medical Center. If Medical Center is unable to accept the patient because of lack of physical or professional resources, Medical Center personnel shall assist the Transferring Facility in locating an alternative center for patient placement.

4.04 Method of Transport. Transfer arrangements shall be made by the mutual consent of the transferring and consulting physicians. The transferring physician shall consult with the receiving physician at Medical Center, in order to determine the method of transport to be used, including

providing appropriate health care practitioner(s) to accompany the patient, if necessitated by the patient's condition. Transferring Facility agrees to pay the costs of the patient's transportation to Medical Center if there is no third party payor.

4.05 Stabilization Prior to Patient Transfer. To the extent possible, patients will be stabilized prior to transfer and treatment initiated to ensure that the transfer will not, within a reasonable medical probability, result in harm to the patient or jeopardize the patient's survival. The Transferring Facility shall be responsible for: (i) the stabilization and care of patients prior to transport; and (ii) arranging transportation of the patient to Medical Center. Medical Center's responsibility for the patient's care shall begin when the patient is admitted, as either an inpatient or an outpatient, to Medical Center.

4.06 Patient/Legal Representative Consent to Transfer. The Transferring Facility shall be responsible for informing the patient, and the patient's parent(s) or other legal representative, of the transfer process and for obtaining any necessary consent or release to effect the transfer. Transferring Facility shall use its best efforts to arrange for the parent(s) or other legal representative to be present at the time of transport, if applicable.

4.07 Patient Belongings. Transferring Facility shall be responsible for the transfer or other appropriate disposition of any personal belongings of the patient.

## ARTICLE V

### RECORDS AND TRANSMISSION OF INFORMATION

5.01 Release of Patient Records by Transferring Facility. The parties shall comply with all applicable laws and regulations pertaining to the release of patient medical records, including without limitation: (i) The Confidentiality of Medical Information Act of 1981, California Civil Code Sections 56, et seq. [General Patient Medical Records]; (ii) California Welfare & Institutions Code §5328.6 and §5328.7 [Mental Health Records]; (iii) 42 U.S.C. §§290dd-2; 42 C.F.R., Part 2, §2.31 [Alcohol and Drug Abuse Records]; (iv) Health Insurance Portability and Accountability Act of 1996, as amended from time to time, including the amendments and related laws of the Health Information Technology for Economic and Clinical Health Act, and regulations promulgated thereunder, California laws relating to the privacy of patient and individual information and other applicable laws; and (v) applicable laws pertaining to patient transfer (as referenced in Article XIV, Paragraph 14.01 of this Agreement), as amended from time to time. To the extent permitted by applicable law, Transferring Facility shall send with the patient, or arrange to be immediately transmitted (via Facsimile), at the time of transfer the necessary documents and completed forms containing the medical, social, and/or other information necessary to ensure continuity of care to the patient. Such documentation shall include, without limitation, the following:

- (a) Identification of the patient;

- (b) Patient diagnosis;
- (c) Copies of the relevant portions of the patient's medical record (including medical, nursing, dietary, laboratory, X-rays, and medication records);
- (d) Relevant transport forms; and
- (e) Copy of signed consent for transport of a minor, if applicable.

5.02 Release of Patient Records by Medical Center. To the extent permitted under (i) California Civil Code Section 56.10(c), as amended; and (ii) applicable laws pertaining to patient transfer (set forth in Article XIV, Paragraph 14.01 of this Agreement), Medical Center shall provide information on the patient's diagnosis, condition, treatment, prognosis, and any complications to the transferring physician during the time that the patient is hospitalized at Medical Center and upon discharge or transfer from Medical Center.

5.03 Record Access and Disclosure. For the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, as amended, and any written regulation thereto, Transferring Facility and Medical Center agree to comply with the statutory requirements governing the maintenance of documentation to verify the costs of Services rendered under this Agreement and under any future agreements between the parties.

## ARTICLE VI

### RETURN OF PATIENT TO TRANSFERRING FACILITY

6.01 Arrangement for Return of Patient. When the patient's physician at Medical Center determines that the patient is medically fit for return to Transferring Facility, the patient's physician at Medical Center shall contact an appropriate physician at Transferring Facility to arrange for the return of the patient. The consent of the appropriately authorized staff at Transferring Facility to receive the patient shall be obtained prior to the patient's release from Medical Center and such consent shall be documented in the patient's medical record. Medical Center shall send with the patient at the time of transfer the necessary documents and forms containing the medical, social, and/or other information necessary to ensure continuity of care to the patient. Medical Center shall be responsible for informing the patient, patient's parent(s) or other legal representative, of the transfer process and for obtaining any necessary consent or release required for the transfer or the appropriate disposition of any personal effects of the patient. Medical Center shall be responsible for arranging patient transport to Transferring Facility. Transferring Facility agrees to pay the costs of the patient's transportation back to Transferring Facility if there is no third party payor.

6.02 Mutual Agreement of Parties. The return transfer of a patient for continued care upon completion of the treatment at the Medical Center shall be made by mutual agreement.

## ARTICLE VII

## CHARGES FOR SERVICES

The patient is primarily responsible for payment for care received at either facility. Charges for all services performed by either Transferring Facility or Medical Center shall be made and collected by Transferring Facility or Medical Center in accordance with its regular policies and procedures. Unless special arrangements have been made to the contrary, the transfer of a patient from one institution to the other shall not be construed as imposing any financial liability by one institution on the other. The parties shall cooperate with each other in the exchange of information about financial responsibility for the services rendered by them to patients who are transferred to Medical Center.

## ARTICLE VIII AUTHORITY OF GOVERNING BODIES

The Governing Body of each institution shall have exclusive control of its policies, procedures, management, assets and affairs, and neither party shall incur any responsibility by virtue of this Agreement for any debts or other financial obligations incurred by the other party. Further, nothing in this Agreement shall be construed as limiting the rights of either institution to contract with any other facility or center on a limited or general basis.

## ARTICLE IX INDEPENDENT CONTRACTOR STATUS

Both parties are independent contractors. Neither party is authorized or permitted to act as an agent or employee of the other party. Nothing in this Agreement shall in any way alter the freedom enjoyed by either party, nor shall it in any way alter the control of the management, assets, and affairs of the respective party. Further, nothing in this Agreement, or any future agreement(s) between the parties, shall be deemed to create a relationship of employer/employee, principal/agent, joint venturers or partners.

## ARTICLE X INDEMNIFICATION

The parties agree to indemnify, defend, and hold harmless one another, their officers, directors, agents and employees from and against any and all liability, loss, costs, expense, attorney's fees, actions, or claims for injury or damages arising out of their performance of this Agreement, but only in proportion to and to the extent such liability, loss, costs, expense, attorney's fees, actions, or claims for injury or damages are caused by or result from the act or omission of the indemnifying party.

## ARTICLE XI INSURANCE PROVISIONS

Medical Center and Transferring Facility each shall secure and maintain, during the term of this Agreement, comprehensive general and professional liability coverage, auto, and property damage insurance coverage providing limits of liability as are generally recognized by the County Risk Management Division. Such coverage may be provided through a funded self-insurance retention program.

ARTICLE XII  
NON-DISCRIMINATION

During the performance of this Agreement, both parties agree not to discriminate against any employee or applicant for employment in any manner prohibited by law and to take affirmative action to ensure that its employees and applicants for employment are treated in a non-discriminatory manner as required by laws, regulation, ordinance or order.

ARTICLE XIII  
GENERAL PROVISIONS

13.01 Compliance with Laws and Regulations. This Agreement is entered into and shall be performed by both parties in compliance with all local, state and federal laws, rules, regulations, ordinances and guidelines, including, without limitation: (i) The “anti-dumping” provisions of the federal “Consolidated Omnibus Budget Reconciliation Act (“COBRA”), entitled the “Emergency Medical Treatment and Active Labor Act” (“EMTALA”), codified at 42 U.S.C. section 1395dd (including the Regulations promulgated thereunder); and (ii) California Health & Safety Code Sections 1317 through 1317.9a, as amended from time to time.

13.02 Non-waiver. No waiver of any term or condition of this Agreement by either party shall be deemed a continuing or further waiver of the same term or condition or a waiver of any other term or condition of this Agreement.

13.03 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Kern County.

13.04 Assignment. This Agreement shall not be assigned in whole or in part by either party hereto without the express written consent of the other party.

13.05 Invalid Provision. In the event that any portion of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall be deemed to continue to be binding upon the parties hereto in the same manner as if the invalid or unenforceable provision were not a part of this Agreement.

13.06 Amendment. This Agreement may be amended at any time by a written agreement signed by authorized representatives of both parties.

13.07 Notice. Any notice required or allowed to be given hereunder shall be deemed to have been given upon deposit in the United States mail, registered or certified, return receipt requested, addressed to each of the parties at the following addresses:

Transferring Facility : Public Health Services Department  
1800 Mount Vernon Avenue  
Bakersfield, California 93306  
Attention: Contracts Unit

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

13.08 Entire Agreement. This Agreement constitutes the entire agreement between the parties and contains all of the agreements between them with respect to the subject matter hereof and supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof.

13.09 Binding Agreement. This Agreement shall be binding upon the successors or assigns of the parties hereto.

13.10 Headings. The headings to the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit, or expand express provisions of this Agreement.

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

IN WITNESS WHEREOF, Medical Center and Transferring Facility have caused this Agreement to be executed as of the day and year first above written.

“MEDICAL CENTER”  
KERN COUNTY HOSPITAL AUTHORITY

“TRANSFERRING FACILITY”  
COUNTY OF KERN

By \_\_\_\_\_  
Chairman  
Board of Governors

By \_\_\_\_\_  
Chairman  
Board of Supervisors

APPROVED AS TO CONTENT:  
Kern Medical Center

APPROVED AS TO CONTENT:  
Public Health Services Department

By: \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

By: \_\_\_\_\_  
Matthew Constantine  
Director of Public Health Services

APPROVED AS TO FORM:  
Office of County Counsel

APPROVED AS TO FORM:  
Office of County Counsel

By: \_\_\_\_\_  
Shannon Hochstein  
Deputy

By: \_\_\_\_\_  
Gurujodha S. Khalsa  
Chief Deputy

**EXHIBIT A**  
**Transferring Facilities**

<b>Facility</b>	<b>Address</b>
Kern County Health Department Arvin Facility	204 South Hill, Arvin, CA 93203
Kern County Health Department Bakersfield Facility	1800 Mt. Vernon Ave., Bakersfield, CA 93306
Kern County Health Department Delano Facility	455 Lexington St, Delano, CA 93215
Kern County Health Department Lake Isabella Facility	7050 Lake Isabella Blvd., Lake Isabella, CA 93240
Kern County Health Department Mojave Facility	1775 Highway 58, Mojave, CA 93501
Kern County Health Department Ridgecrest Facility	250 W. Ridgecrest Blvd., Ridgecrest, CA 93555
Kern County Health Department Shafter Facility	329 Central Valley Hwy., Shafter, CA 93263



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

May 18, 2016

**SUBJECT: Resolution of Appeals before Civil Service Commission**

**Required Action: Approve; Authorize Chairman to sign.**

Requesting Board adopt resolution that agrees to provide resolution for any appeals pending before the Civil Service Commission as of the date of transfer to the Hospital Authority.

This agreement would pertain only to appeals by employees who have been informed of the intent to dismiss, suspend, or reduce in rank or compensation and who are transferring from the County to the Hospital Authority and who have initiated the formal appeal process which has not, prior to July 1<sup>st</sup>, been resolved.

A formal "pending" appeal means the employee has filed a written appeal through the secretary of the Commission for the specific actions listed above and that appeal has not yet been issued a final order and/or decision by the Commission prior to the date of transfer.

This resolution has been presented to and approved by the Civil Service Commission on May 9, 2016.

**AGREEMENT REGARDING RESOLUTION OF APPEALS PENDING BEFORE  
THE CIVIL SERVICE COMMISSION ON THE DATE OF TRANSFER**

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**BY AND BETWEEN**  
**THE COUNTY OF KERN,**  
**KERN COUNTY HOSPITAL AUTHORITY,**  
**AND**  
**THE KERN COUNTY CIVIL SERVICE COMMISSION**

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\_\_\_\_\_, 2016

## **AGREEMENT REGARDING RESOLUTION OF APPEALS PENDING BEFORE THE CIVIL SERVICE COMMISSION ON THE DATE OF TRANSFER**

This Agreement (“Agreement”) regarding resolution of appeals pending before the Civil Service Commission (“Commission”) on the Date of Transfer (as hereinafter defined) is entered into between the County of Kern (“County”), the Kern County Hospital Authority (“Authority”) and the Civil Service Commission, County of Kern (“Commission” or “Civil Service Commission”) to provide for the orderly resolution of any timely Civil Service Commission appeals filed by an officer or employee of the County of Kern occupying a position which is to be, or would have been, transferred from the County to the Authority (“Affected Position”). This Agreement provides a means of finally resolving any appeals arising out of the dismissal, suspension or reduction in rank or compensation of an officer or employee holding an Affected Position prior to the date of transfer of employees from the County to the Authority (“Date of Transfer”) but which will not have been finally resolved by the Commission by the Date of Transfer. This Agreement is an exhibit to, and an integral part of that certain Master Contract For The Transfer of Health Facilities (“Master Contract”) between Buyer (the “Authority”) and Seller (the “County”) of even date herewith. Defined terms in the Master Contract shall have the same meaning in this Agreement.

### **Preamble**

1. Pursuant to Chapter 3.04 of the Kern County Code of Ordinances (“Code of Ordinances”), and the County Civil Service Enabling Law, Government Code Sections 31100 et seq., the County adopted the civil service system and created the Civil Service Commission.
2. Pursuant to Section 3.04.080 of the Code of Ordinances, any officer or employee in the classified civil service may be dismissed, suspended or reduced in rank or compensation by the appointing authority, after appointment or promotion is complete, by a written order, stating specifically the reasons for the action. The order must be filed with the secretary of the Commission and a copy thereof furnished to the affected officer or employee. The officer or employee may, within ten (10) business days after presentation to him or her of the order, file an appeal from the order through the secretary of the Commission. Thereafter, the Commission is empowered to conduct a hearing or investigation and, at the conclusion of which, shall issue a final order and decision regarding the appeal.
3. The parties hereto acknowledge that, at the time of the Date of Transfer, there may exist one or more Pending Appeals, as defined below in Section 1 of this Agreement, which have not been the subject of a final order and decision by the Commission.
4. Health and Safety Code §101855(b)(1)(A) provides that the Authority “shall not be governed by or subject to the civil service requirements of the county. . .”

5. This Agreement is intended to, and does provide a means for resolving Pending Appeals.

### **Agreement**

1. For the purposes of this Agreement a “Pending Appeal” occurs when all of the following conditions are fulfilled:
  - A. In compliance with Section 3.04.080 of the Code of Ordinances, an officer or employee in an Affected Position has been furnished with a written order prior to the Date of Transfer informing such officer or employee that he/she is to be dismissed, suspended or reduced in rank or compensation by the appointing authority; and,
  - B. In compliance with Section 3.04.080 of the Code of Ordinances the officer or employee has filed a written appeal from the written order through the secretary of the Commission within ten (10) business days after presentation to him/her of the written order; and,
  - C. The Commission has not issued a final order and decision in response to such written appeal prior to the Date of Transfer,
2. The Commission shall retain jurisdiction over a Pending Appeal after the Date of Transfer to initiate and/or complete its investigation and hearing of the appeal and such hearing shall be conducted in compliance with Section 3.04.080 of the Code of Ordinances.
3. The Commission shall affirm, modify or revoke a written order pertaining to a Pending Appeal in compliance with Section 3.04.080.C of the Code of Ordinances.
4. The Commission shall issue a final order and decision regarding a Pending Appeal in compliance with Section 3.04.080.D of Code of Ordinances and shall certify the order to the Authority CEO. Notwithstanding the fact that the final order and decision of the Commission shall have occurred after the Date of Transfer, by the terms of this Agreement the Authority and the County shall, on receipt of the final order and decision of the Commission, be bound by such order and decision which shall forthwith be enforced and followed.
5. Except to the extent explicitly provided for in this Agreement, nothing herein shall be interpreted as:
  - A. Granting to the Commission, or to the County, any authority to receive, process or resolve any appeal by an officer or employee in an Affected Position, or any appeal by any officer or employee of the Authority challenging his/her dismissal, suspension or reduction in rank or compensation; and

- B. Extending or applying the Rules of the Commission, or extending or applying any policies or operational rules of the County to any officer or employee in an Affected Position, or to any officer or employee of the Authority.
- 6. This Agreement may be amended by written agreement of the parties.
  - 7. This Agreement shall remain in effect until all obligations created hereunder shall have been satisfied.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

**COUNTY**

**AUTHORITY**

**COUNTY OF KERN**

**KERN COUNTY HOSPITAL  
AUTHORITY**

By:  
Name:  
Title:

By:  
Name:  
Title:

APPROVED AS TO CONTENT:  
County Administrative Office

APPROVED AS TO CONTENT:  
Kern County Hospital Authority

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Assistant County Administrative  
Officer

By: \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
Office of County Counsel

APPROVED AS TO FORM:  
Office of County Counsel

By: \_\_\_\_\_  
Teresa A. Goldner  
Kern County Counsel

By: \_\_\_\_\_  
Karen S. Barnes  
Chief Deputy County Counsel  
Counsel for Kern County Hospital  
Authority

By: \_\_\_\_\_  
Mark Nations  
Assistant County Counsel

**CIVIL SERVICE COMMISSION**

By: \_\_\_\_\_  
Joy Rose  
President



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

May 18, 2016

**SUBJECT: Recommendation of nominees to fill one open Director position.**

**Recommended Action: Make recommendation; Refer to Kern County Board of Supervisors for Appointment.**

**Summary:**

Russell V. Judd, Chief Executive Officer will provide the Board with a recommendation of the nominating committee.



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

May 18, 2016

**SUBJECT: Kern County Hospital Authority Chief Executive Officer Report**

**Required Action: Receive and File.**

**Report of Hospital Activities**

**Hospital Week** – We had a wonderful experience celebrating “Hospital Week” and “Nurse’s Week”. This included a proclamation by the Board of Supervisors recognizing our wonderful nurses. The schedule of activities and some pictures are attached.

**Hospital Authority** – Our most pressing issue is the completion of all of the work to transition Kern Medical from the County of Kern to the Kern County Hospital Authority. There are many items that need to be completed including but not limited to: licensing through CDPH, pharmacy licensing, change of ownership documentation, assignment of all contracts, multiple agreements with the County, IRS letter and numerous more items.

**Healthcare Market and Political Update**

**Kern Medical Celebratory Transfer - 10:00 am June 13**

The Board of Supervisors will hold their final meeting at Kern Medical on Tuesday June 13 at 10:00. This will be a celebratory meeting recognizing the transfer of the Kern Medical from the County of Kern to the Kern County Hospital Authority. We invite you to attend the meeting.

**Grand Jury**

I was interviewed by the Grand Jury in regards to the improvement we have made in the financial condition of Kern Medical and the transition to the Hospital Authority. I was with them at their office for approximately 30 minutes. They are coming for a tour of the hospital on June 3, 2016. When I asked what they wanted to see on their tour, they reported, the robot.

**March Financial Results**

In anticipation of the transfer and the fiduciary obligation of the Board of Governors, I have attached the financial results of Kern Medical for March 2016 for your review.



# Hospital Week

## *Schedule of Events*



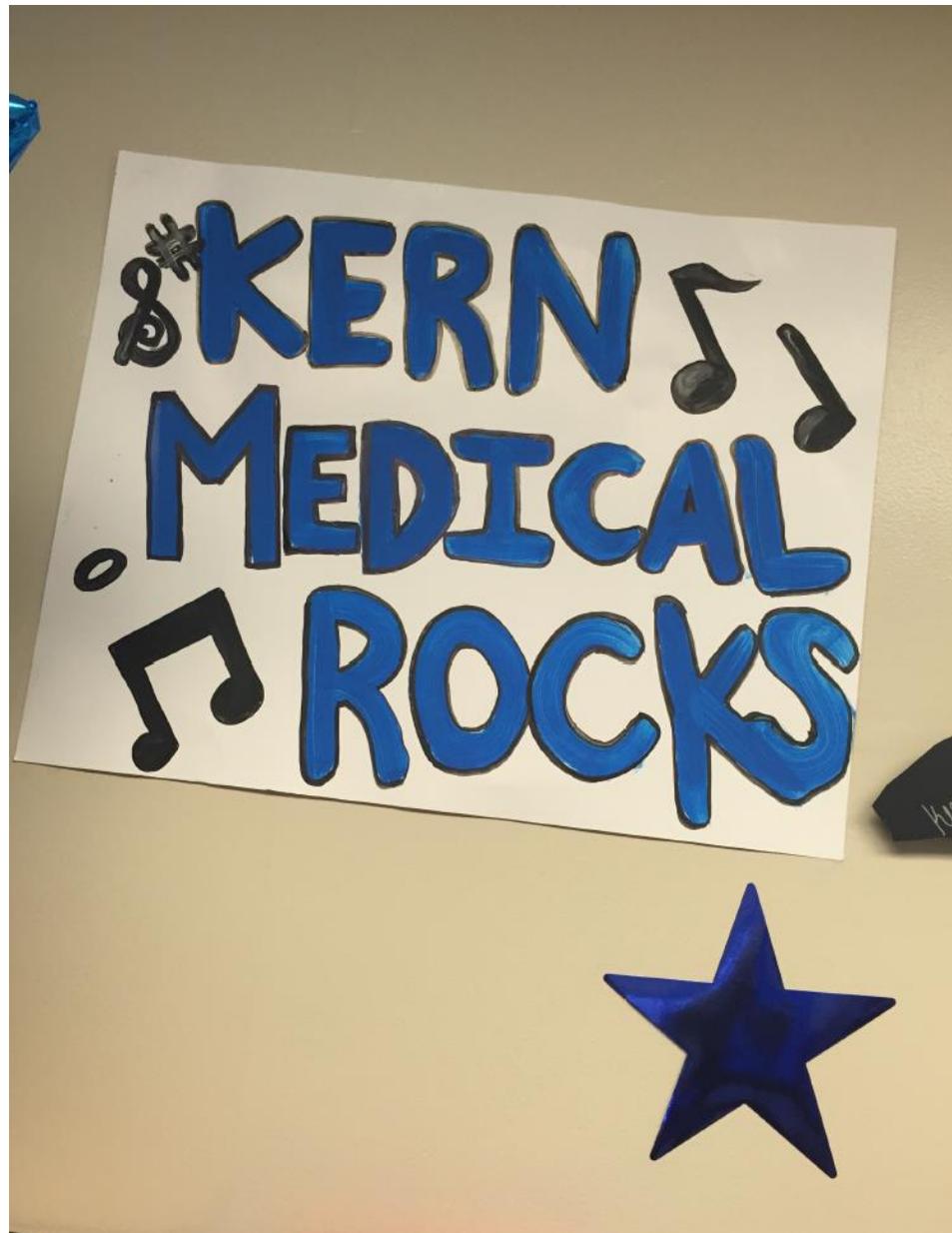
May				
Monday	Tuesday	Wednesday	Thursday	Friday
9	10	11	12	13
<p>Message from CEO</p> <p>Leadership Recognition of Staff &amp; Physicians</p>	<p>Staff &amp; Physician Appreciation Gift Giveaway</p> <p>Cafe, Sagebrush, &amp; M Street</p>	<p>Dessert Bar 11am-1pm</p> <p>Courtyard &amp; Sagebrush</p> <p>Cookies 8-9pm</p> <p>Night Shift</p>	<p>Spirit Day All day</p> <p>All Departments</p> <p>Unit Decoration</p> <p>Judging Day</p>	<p>Donuts &amp; Coffee 6-9am</p> <p>Cafe, Sagebrush, &amp; M Street</p>







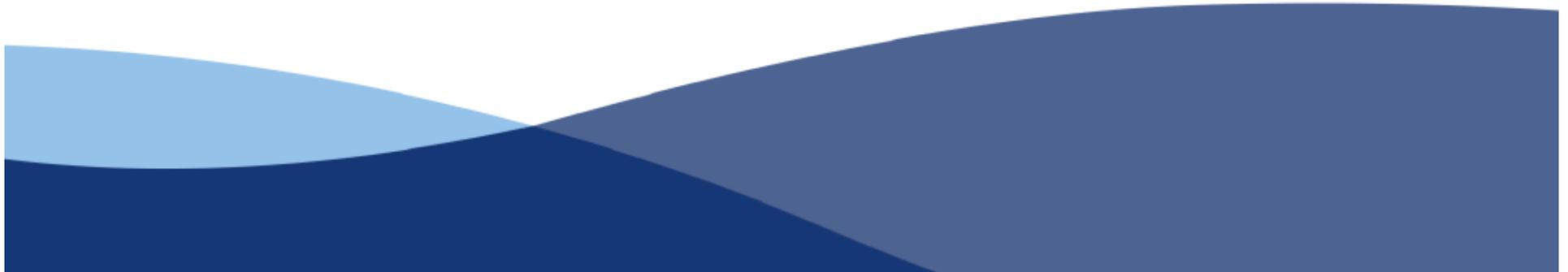






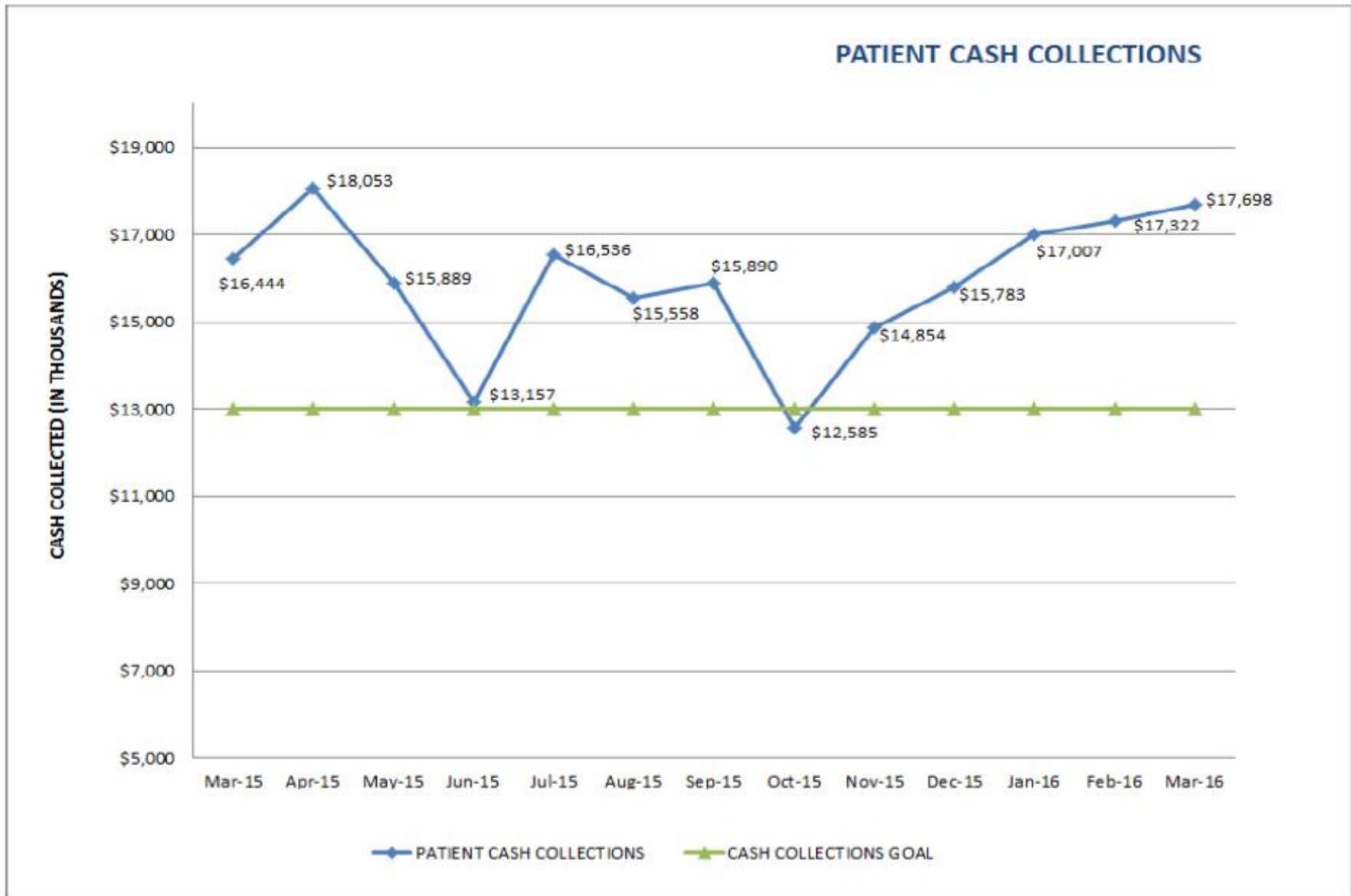
# **BOARD OF SUPERVISORS' FINANCIAL REPORT: KERN MEDICAL – MARCH 2016**

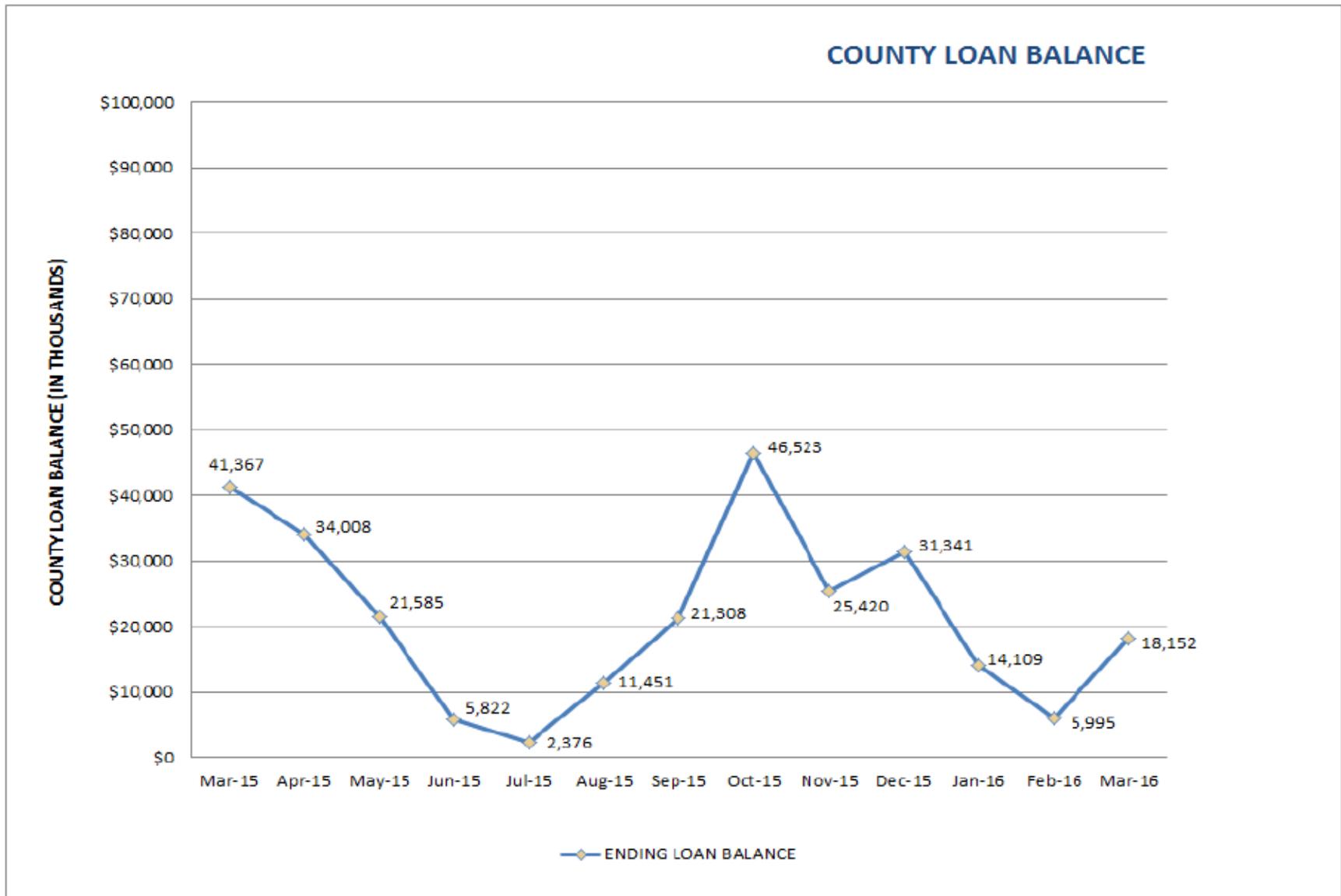
MAY 10, 2016



## PROFIT & LOSS - ACTUAL TO BUDGET

	MONTH TO DATE			MARCH 2016	YEAR TO DATE			
	ACTUAL	BUDGET	VAR%		ACTUAL	BUDGET	VAR%	
1	\$ 69,160,846	\$ 62,567,385	10.5%	<b>PATIENT REVENUE</b>	\$ 542,025,005	\$ 534,955,346	1.3%	1
2	51,425,435	49,038,706	4.9%	<b>DEDUCTIONS FROM REVENUE</b>	403,731,937	422,204,229	-4.4%	2
3	17,735,411	13,528,679	31.1%	<b>NET PATIENT REVENUE</b>	138,293,068	112,751,117	22.7%	3
4	9,164,993	9,687,024	-5.4%	<b>INDIGENT PATIENT CARE FUNDING REVENUE</b>	74,499,513	85,933,281	-13.3%	4
5	1,500,000	1,043,000	0.0%	<b>CAPITATION PREMIUM REVENUE</b>	9,500,000	9,387,000	0.0%	5
6	1,086,210	1,358,003	-20.0%	<b>OTHER OPERATING REVENUE</b>	9,691,942	12,046,805	-19.5%	6
7	29,486,614	25,616,706	15.1%	<b>NET OPERATING REVENUE</b>	231,984,523	220,118,204	5.4%	7
				<b>OPERATING EXPENSES</b>				
8	16,974,643	17,795,541	-4.6%	<b>SALARIES, BENEFITS &amp; REGISTRY</b>	144,802,660	152,277,723	-4.9%	8
9	1,196,625	1,181,489	1.3%	<b>MEDICAL FEES</b>	11,368,379	10,101,795	12.5%	9
10	1,354,100	848,171	59.6%	<b>OTHER PROFESSIONAL FEES</b>	13,095,674	7,524,091	74.0%	10
11	5,385,226	3,664,278	47.0%	<b>SUPPLIES</b>	36,292,532	31,329,859	15.8%	11
12	1,206,970	945,545	27.6%	<b>PURCHASED SERVICES</b>	9,755,420	8,387,888	16.3%	12
13	1,765,480	1,383,372	27.6%	<b>OTHER EXPENSES</b>	11,663,311	12,271,796	-5.0%	13
14	27,883,044	25,818,396	8.0%	<b>TOTAL OPERATING EXPENSES</b>	226,977,976	221,893,152	2.3%	14
15	1,603,570	(201,690)	895.1%	<b>EBIDA (OPERATING INCOME)</b>	5,006,547	(1,774,948)	382.1%	15
16	(466,432)	(428,710)	8.8%	<b>NON-OPERATING REVENUE &amp; EXPENSE, NET</b>	(3,585,836)	(3,803,068)	5.7%	16
17	1,137,138	(630,400)	280.4%	<b>NET INCOME/(LOSS)</b>	1,420,711	(5,578,017)	125.5%	17
18	-	-	0.0%	<b>COUNTY CONTRIBUTION-CAPITAL</b>	-	-	0.0%	18
19	631,414	631,415	0.0%	<b>COUNTY CONTRIBUTION</b>	5,601,255	5,601,259	0.0%	19
20	\$ 1,768,552	\$ 1,015	174108.7%	<b>GAIN/(LOSS) WITH COUNTY CONTRIBUTION</b>	\$ 7,021,966	\$ 23,243	-30111.5%	20





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

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on May 18, 2016, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

  X   Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

**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 May 18, 2016, to consider:

     PUBLIC EMPLOYEE APPOINTMENT/RECRUITMENT - Title: \_\_\_\_\_  
(Government Code Section 54957)

  X   PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Kern County Hospital  
Authority Chief Executive Officer (Government Code Section 54957)

     PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE -  
(Government Code Section 54957)

     CONFERENCE WITH LABOR NEGOTIATORS - \_\_\_\_\_  
(Government Code Section 54957.6)