



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, August 16, 2023

11:30 A.M.

BOARD TO RECONVENE

Board Members: Berjis, Bigler, McLaughlin, Pelz, Pollard, Zervis
Roll Call:

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing the appointment of James L. Zervis, Kern County Chief Administrative Officer, to the Kern County Hospital Authority Board of Governors –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on July 19, 2023 –
APPROVE

CA

- 5) Proposed Agreement with Mohammed A. S. Molla, M.D., a contract employee, for professional medical and administrative services in the Department of Psychiatry from August 16, 2023 through August 15, 2028, in an amount not to exceed \$3,000,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Agreement with John B. Schlaerth, M.D., A Medical Corporation, an independent contractor, for professional medical services in the Department of Obstetrics and Gynecology from September 1, 2023 through August 31, 2025, in an amount not to exceed \$800,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Personal/Professional Services Agreement with Aspen Street Architects, Inc., an independent contractor, for analysis and report in compliance with the non-structural evaluation required by Senate Bill 1953, Seismic and Compliance Safety Act and 2022 applicable law from August 16, 2023 through August 15, 2026, in an amount not to exceed \$550,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Agreement with McMurtrey Lince, Inc., an independent contractor, for H/VAC replacement services, effective August 16, 2023, in an amount not to exceed \$350,384 – MAKE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE

CA

- 9) Proposed Agreement with James E. Thompson, Inc., doing business at JTS Construction, an independent contractor, for construction services related to installation of two H/VAC units, effective August 16, 2023, in an amount not to exceed \$172,500 – MAKE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE

CA

- 10) Proposed retroactive Personal/Professional Services Agreement with G.L. Bruno Construction, Inc., an independent contractor, for emergency H/VAC repair and maintenance services from July 21, 2023 through July 20, 2026, in an amount not to exceed \$450,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed retroactive Rental Contract with H&E Equipment Services, Inc., an independent contractor, containing nonstandard terms and conditions, for rental equipment for the Emergency Temporary Air Handler project, in an amount not to exceed \$1,871 – MAKE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Agreement with Teleflex, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of urology surgical supplies, effective August 16, 2023, in an amount not to exceed \$120,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed retroactive Amendment No. 1 to Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees, amending the Adoption Agreement with Voya Institutional Trust Company, an independent contractor, to permit recognition of service with other employers for vesting purposes only, effective July 1, 2023 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Value Rental Supplement to Addendum to Agreement 078-2018 with UBEO West, LLC, an independent contractor, approved at the regular meeting on July 19, 2023 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY OF EQUIPMENT

CA

- 15) Proposed Presidio Technology Capital Financing Application for State and Local Government in support of Master Lease Schedule 682210 with Presidio Technology Capital, LLC, an independent contractor, approved at the regular meeting on July 19, 2023 – APPROVE; ADOPT RESOLUTION; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN FURTHER LEASE DOCUMENTS SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

CA

- 16) Proposed Price Change and Renewal Amendment to the Master Customer Agreement 16016 with Experian Health, Inc., an independent contractor, containing nonstandard terms and conditions, for the period September 14, 2016 through September 13, 2023, for revenue cycle support, extending the term for three years from September 14, 2023 through September 13, 2026, and increasing the maximum payable by \$285,840, from \$802,812 to \$1,088,652, to cover the term – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Agreement with Hamilton Medical, Inc., an independent contractor, for purchase of medical ventilators from August 16, 2023 through August 15, 2028, in an amount not to exceed \$1,000,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA)

- 18) Proposed retroactive Side Letter of Agreement to Memorandum of Understanding 042-2021 with Committee of Interns and Residents/Service Employees International Union 1957, for the period July 1, 2021 through June 30, 2024, to permit resident physicians to seek reimbursement from the Educational Fund to supplement the remaining 50% of the fee to cover the cost of USMLE Step 3 or COMLEX-USA licensing examination, effective July 1, 2022 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA)

- 19) Proposed retroactive Personal/Professional Services Agreement with McMurtrey Lince, Inc., an independent contractor, for general construction services and maintenance related to the CT scan trailer from May 1, 2023 through April 30, 2026, in an amount not to exceed \$450,000 – MAKE A FINDING THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 20) Proposed Agreement with Meridian Healthcare Partners, Inc., an independent contractor, to terminate Agreement 012-2021 for healthcare consulting and executive management services including supervision and management of the day-to-day operations of Kern Medical Center, effective August 31, 2023, in an amount not to exceed \$850,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

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

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

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

CA
24) Miscellaneous Correspondence –
RECEIVE AND FILE

CA
25) Claims and Lawsuits Filed as of July 31, 2023 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

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

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

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

29) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –

30) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Unrepresented Employees (Government Code Section 54957.6) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, SEPTEMBER 20, 2023 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

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

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

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

24) MISCELLANEOUS CORRESPONDENCE AS OF JULY 17, 2023 –

- A) Correspondence received July 17, 2023, from Nydia Maders concerning questions and comments related to Agenda Item 16 for the July 19, 2023 Board Meeting (referred to Board of Governors)
- B) Correspondence received July 17, 2023, from Tuesday Ochoa concerning questions and comments related to Agenda Item 16 for the July 19, 2023 Board Meeting (referred to Board of Governors)
- C) Correspondence received July 17, 2023, from Toni Morrow concerning questions and comments related to Agenda Item 16 for the July 19, 2023 Board Meeting (referred to Board of Governors)
- D) Correspondence received July 17, 2023, from Chris Harkins concerning questions and comments related to Agenda Item 16 for the July 19, 2023 Board Meeting (referred to Board of Governors)
- E) Correspondence dated July 21, 2023, from Kathleen Krause, Clerk of the Board, Kern County Board of Supervisors, concerning appointment of James Zervis, Chief Administrative Officer, as ex-officio member to the Kern County Hospital Authority Board of Governors
- F) Correspondence dated July 28, 2023, from Raji Brar, concerning resignation from the Kern County Hospital Authority Board of Governors

25) CLAIMS AND LAWSUITS FILED AS OF JULY 31, 2023 –
RECEIVE AND FILE

- A) Claim in the matter of Sylvia K. Aristigui
- B) First Amended Unfair Practice Charge in the matter of Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Public Employment Relations Board Case No. LA-CE-1599-M
- C) Claim in the matter of José Manuel Ortiz
- D) Claim in the matter of Jeffry Huffman
- E) Claim in the matter of Kathryn Ann Phillips
- F) Claim in the matter of Gladys Nordlee
- G) Unfair Practice Charge in the matter of Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Public Employment Relations Board Case No. LA-CE-1661-M



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, July 19, 2023

11:30 A.M.

BOARD RECONVENED

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

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

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

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

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

GEORGE PFISTER HEARD REGARDING THE TIMELINE AND FINANCIAL IMPLICATIONS OF SEISMIC RETROFIT OF KERN MEDICAL CENTER; CHIEF EXECUTIVE OFFICER SCOTT THYGERSON RESPONDED REGARDING THE HISTORY OF HOSPITAL SEISMIC RETROFIT IN CALIFORNIA

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 REPORTED ON THE RECENT ACHIEVEMENTS IN GRADUATE MEDICAL EDUCATION DURING THE LAST ACADEMIC YEAR INCLUDING THE RESIDENT/FELLOW GRADUATION, THE NUMBER OF GRADUATES WHO PLAN TO STAY IN KERN COUNTY, AND THE START OF THE LARGEST CLASS OF RESIDENTS AND FELLOWS IN KERN MEDICAL CENTER HISTORY ON JULY 1, 2023

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on June 21, 2023 and special meeting on June 29, 2023 –
APPROVED
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 4) Proposed retroactive Personal/Professional Services Agreement with Patton Sheet Metal Works, Inc., doing business as Patton Air Conditioning, an independent contractor, for H/VAC mechanical system maintenance and repairs, from July 14, 2023 through July 13, 2026, in an amount not to exceed \$950,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 088-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 5) Proposed Amendment No. 1 to Personal/Professional Services Agreement 55521 with Skarphol/Frank Associates, formally known as Paul Skarphol, doing business as Skarphol Associates, an independent contractor, for architectural/engineering services for major maintenance and capital projects, for the period November 19, 2021 through November 18, 2024, increasing the maximum payable by \$250,000, from \$250,000 to \$500,000, to cover the term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 089-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 6) Proposed Agreement with Mountain West Builders, Inc, an independent contractor, for construction services related to laboratory modifications, effective July 19, 2023, in an amount not to exceed \$148,020 –
MADE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 090-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$134,564
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 7) Proposed Master Lease Schedule No, 682210 to Agreement 053-2018 with Presidio Technology Capital, LLC, an independent contractor, for the lease of core network switches to support Philips Telemetry and Novarad PACS Radiology Imaging Core Systems, from August 1, 2023 through July 31, 2028, in an amount not to exceed \$7,318,974 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 091-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 8) Proposed Addendum to Agreement 078-2018 with UBEO West, LLC, formally known as Ray A Morgan Company, an independent contractor, containing nonstandard terms and conditions, for the period April 20, 2019 through April 19, 2024, for purchase of additional IT equipment in an amount not to exceed \$6,550 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 092-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 9) Proposed Agreement with CareFusion Solutions, LLC, doing business as MedKeeper, an independent contractor, for pharmacy compliance and operations software from July 19, 2023 through July 18, 2028, in an amount not to exceed \$160,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 093-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 10) Proposed Service Agreement with Morrison Management Specialists, Inc., an independent contractor, for dietary and nutrition services from August 1, 2023 through July 31, 2028, in an amount estimated not to exceed \$9,800,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 094-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 11) Proposed retroactive Service Contract with Sciton, Inc., an independent contractor, containing nonstandard terms and conditions, for laser device repairs, for a term of one year from May 17, 2023 through May 16, 2024, in an amount not to exceed \$22,454, and rescission of Agreement 063-2023, dated May 17, 2023 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 095-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 12) Proposed retroactive Amendment No. 2 to the Memorandum of Understanding 062-2021 with Kern Behavioral Health and Recovery Services, an independent contractor, for mental health services, for the period July 1, 2022 through June 30, 2024, to delineate responsibility for transportation, credentialing and ECT services, effective December 6, 2022, and rescission of Amendment 085-2023, dated June 21, 2023 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 096-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 13) Update on Section 218 Election of the Social Security Act –
RECEIVED AND FILED
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 14) Proposed Compliance Program for Fiscal Year 2023-2024 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 097-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 15) Proposed Agreement with C-S and J Pathology Medical Group, Inc., an independent contractor, containing nonstandard terms and conditions, for professional medical services in the Department of Pathology from July 19, 2023 through July 18, 2024, in an amount not to exceed \$20,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 098-2023
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

NOTE: CHIEF EXECUTIVE OFFICER SCOTT THYGERSON LEFT THE ROOM PRIOR TO THE DISCUSSION ON AGENDA ITEM 16 AND DID NOT RETURN UNTIL AFTER THE DISCUSSION AND VOTE ON ITEM 16

- 16) Proposed Agreement with Alton Scott Thygerson, a contract employee, for services as chief executive officer of Kern County Hospital Authority for an initial term of three years, effective July 19, 2023, with an option to renew for one additional term of two years, in an amount not to exceed \$1,970,261 during the initial term and \$1,377,533 during the renewal term, with total compensation not to exceed \$3,347,794 over the term, plus applicable benefits –
VICE PRESIDENT & GENERAL COUNSEL KAREN S. BARNES MADE PRESENTATION; DIRECTORS ALSOP, BERJIS, BIGLER, AND POLLARD HEARD IN SUPPORT OF HIRING CHIEF EXECUTIVE OFFICER ALTON SCOTT THYGERSON AS AN EMPLOYEE OF KERN COUNTY HOSPITAL AUTHORITY; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 099-2023

Alsop-Berjis: 5 Ayes; 2 Absent - Brar, McLaughlin

17)

Kern County Hospital Authority Chief Executive Officer report –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON ANNOUNCED THIS IS DIRECTOR ALSOP'S LAST MEETING AND THANKED HIM FOR HIS SERVICE ON THE BOARD OF GOVERNORS; DIRECTOR ALSOP EXPRESSED HIS APPRECIATION AND OPPORTUNITY TO SERVE; RECEIVED AND FILED

Berjis-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

- 18) Kern County Hospital Authority Chief Financial Officer report –
CHIEF FINANCIAL OFFICER ANDREW CANTU MADE PRESENTATION; DIRECTORS
BIGLER AND PELZ HEARD; RECEIVED AND FILED
Pollard-Alsop: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 19) Monthly report on What's Happening at Kern Medical Center –
RECEIVED AND FILED
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 20) Miscellaneous Correspondence –
RECEIVED AND FILED
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

CA

- 21) Claims and Lawsuits Filed as of June 30, 2023 –
RECEIVED AND FILED
Pollard-Pelz: 5 Ayes; 2 Absent - Brar, McLaughlin

ADJOURNED TO CLOSED SESSION

Berjis-Pollard

CLOSED SESSION

- 22) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 23) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 24) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Government Code Section 54956.9(d)(2) & (e)(2)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Meridian Healthcare Partners, Inc. – SEE RESULTS BELOW
- 25) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – SEE RESULTS BELOW
- 26) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – SEE RESULTS BELOW

- 27) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – SEE RESULTS BELOW
- 28) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employees (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION
Alsop-Berjis

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item 22 for Closed Session concerning peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR POLLARD; 2 ABSENT - DIRECTORS BRAR MCLAUGHLIN), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, REQUEST FOR REVISION OF PRIVILEGES, CHANGE IN STAFF STATUS, AND VOLUNTARY RESIGNATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item 23 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item 24 concerning CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2) & (e)(2)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs. Facts and circumstances are as follows: Meridian Healthcare Partners, Inc. – HEARD; NO REPORTABLE ACTION TAKEN

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

Item 26 concerning CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – HEARD; NO REPORTABLE ACTION TAKEN

Item 27 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item 28 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employees (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

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

Pollard

/s/ Mona A. Allen
Authority Board Coordinator

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



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

August 16, 2023

Subject: Proposed Agreement with Mohammed A.S. Molla, M.D., for professional medical and administrative services as Joint Chair and Director of the Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an Agreement with Mohammed A.S. Molla, M.D., for professional medical and administrative services as Joint Chair and Director of Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services.

Dr. Molla is currently a full-time contact employee in the Department of Psychiatry. He has been a staple at Kern Medical since 2005, initially as a member of the core faculty in the Department. In 2015 Dr. Molla was promoted to Acting Joint Chair, and subsequently to Joint Chair. Dr. Molla is board certified in psychiatry-general and child and adolescent psychiatry-subspecialty.

The proposed Agreement is for a term of five years from August 16, 2023 through August 15, 2028. The maximum payable under the Agreement will not exceed \$3,000,000 over the five-year term and is comprised of an annual base salary of \$416,000, compensation for call coverage, a Chair stipend, and retention bonus, all calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty. Dr. Molla's represents the reasonable fair market value compensation for the services he will provide.

Dr. Molla will continue to receive the same complement of benefits offered all employed Kern Medical physicians, including eligibility to participate in the physicians' pension plan, health care coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the Agreement for Professional Services with Mohammed A.S. Molla, M.D., for professional medical and administrative services as Joint Chair and Director of the Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services from August 16, 2023 through August 15, 2028, in an amount not to exceed \$3,000,000, plus applicable benefits, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Mohammed. A.S. Molla, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Mohammed A.S. Molla, M.D. (“Physician”).

**I.
RECITALS**

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

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

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical and administrative services in the Department and teaching services to resident physicians employed by Authority (Agt. #023-2020, dated June 17, 2020), for the period July 14, 2020 through July 13, 2025; and

(e) Each party expressly understands and agrees that Agt. #023-2020 is superseded by this Agreement as of the Commencement Date;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of five (5) years, commencing as of August 16, 2023 (the “Commencement Date”), and shall end August 15, 2028 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

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

4.3.2 Board Certification. Physician shall be board certified by the American Board of Psychiatry and Neurology in psychiatry-general and child and adolescent psychiatry-subspecialty, and maintain such certifications at all times during the Term of this Agreement.

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

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

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

4.5 Standards of Medical Practice. The standards of medical practice and professional duties of Physician at designated Practice Sites shall be in accordance with the KMC Medical Staff Bylaws, Rules, Regulations, and policies, the standards for physicians established by the state Department of Public Health and all other state and federal laws and regulations relating to the licensure and practice of physicians, and The Joint Commission.

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

Managed Care Organization as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization; and/or (iii) enter into a written agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

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

4.8 Medical Records. Physician shall cause a complete medical record to be timely prepared and maintained for each patient seen by Physician. This record shall be prepared in compliance with all state and federal regulations, standards of The Joint Commission, and the KMC Medical Staff Bylaws, Rules, Regulations, and Policies. Documentation by Physician shall conform to the requirements for evaluation and management (E/M) services billed by teaching physicians set forth in the Medicare Carriers Manual, Part 3, sections 15016–15018, inclusive. All patient medical records of Practice Sites, including without limitation, patient medical records generated during the Term of this Agreement, shall be the property of KMC subject to the rights of the respective patients. Upon the expiration or termination of this Agreement by either party for any reason, KMC shall retain custody and control of such patient medical records.

4.9 Physician Private Practice. Physician understands and agrees that he shall not enter into any other physician employment contract or otherwise engage in the private practice of medicine or provide psychiatry services to other organizations, directly or indirectly, during the Term of this Agreement. Notwithstanding the foregoing or the exclusivity provision set forth in paragraph 4.1, Authority agrees Physician shall be permitted to provide psychiatry services as an independent contractor to organizations located outside the "Geographic Area" only during the Term of this Agreement. For purposes of this Agreement, "Geographic Area" is defined as the County of Kern. Physician understands and agrees that he shall not provide psychiatry services to other organizations during Authority work days between the hours of 8:00 a.m. and 5:00 p.m. (except on scheduled days off), or at any time when Physician has not completed the pre-determined clinic and work schedule assignments for Authority. Physician acknowledges that he is not covered by the professional liability insurance provided by Authority under this Agreement while engaged in services or activities outside the Geographic Area or the scope of this Agreement, and Authority shall have no duty or obligation to indemnify, defend or hold Physician harmless for such services or activities. If Physician engages in services or activities beyond the scope of this Agreement, including services provided outside the Geographic Area, Physician hereby agrees to indemnify, defend and hold harmless Authority, its affiliates, and their respective officers, directors, members, managers, employees or agents from and against any and all liability arising therefrom. Physician understands and agrees that the provision of

services as an independent contractor, including those services provided by Physician outside the Geographic Area, shall be subordinate to his obligations and duties under this Agreement.

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

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

5. Compensation Package.

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

5.1.1 Authority shall pay Physician in accordance with a five (5) level Annual Salary range (Steps A through E) commencing with Step A, with a maximum adjustment of one and one-half percent (1½%) per level. The step levels and corresponding salary ranges are set forth in Exhibit "B," Salary Schedule, attached hereto and incorporated herein by this reference.

5.1.2 Initial Annual Salary. Authority shall pay Physician an initial Annual Salary of \$16,000 biweekly not to exceed \$416,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey (“MGMA Survey”) for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units (“Worked RVU”) based on the current MGMA Survey and fulfill all the duties set forth in Exhibit “A” during the Term of this Agreement.

5.1.3 Salary Adjustment. Physician shall be subject to an automatic salary adjustment in accordance with the salary schedule set forth in Exhibit “B,” commencing August 16, 2024, and annually thereafter during the Term.

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

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

5.2 BHU Call Coverage.

5.2.1 Weekday Coverage. Authority shall pay Physician a per diem rate of \$350, less all applicable federal and state taxes and withholding requirements, for every weekday night of call coverage assigned (Monday through Thursday, 5:00 p.m. to 8:00 a.m.).

5.2.2 Weekend Coverage. Authority shall pay Physician a flat fee of \$3,500, less all applicable federal and state taxes and withholding requirements, for every weekend of call coverage assigned (Friday at 5:00 p.m. to Monday at 8:00 a.m.).

5.3 Child Services Call Coverage.

5.3.1 Weekday Coverage. Authority shall pay Physician a per diem rate of \$350, less all applicable federal and state taxes and withholding requirements, for every weekday night of call coverage assigned (Monday through Thursday, 5:00 p.m. to 8:00 a.m.).

5.3.2 Weekend Coverage. Authority shall pay Physician a flat fee of \$4,500, less all applicable federal and state taxes and withholding requirements, for every weekend of call coverage assigned (Friday at 5:00 p.m. to Monday at 8:00 a.m.).

5.3.3 Holiday Coverage. Authority shall pay Physician a flat fee of \$2,250, less all applicable federal and state taxes and withholding requirements, for every holiday of call coverage assigned (8:00 a.m. to 8:00 a.m.).

5.4 Backup Physician Coverage. Authority shall pay Physician an hourly rate of \$150 per hour, less all applicable federal and state taxes and withholding requirements, not to exceed four (4) hours for inpatient and outpatient coverage that exceeds two (2) days per month. Physician is eligible for payment if he is on duty and assumes responsibility for the caseload of another physician covering the service.

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

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

5.7 Excess Patient Rounding. Authority shall pay Physician a flat fee of \$75 per patient, less all applicable federal and state taxes and withholding requirements, for patient rounding in excess of twenty-four (24) patients per workday.

5.8 ECT Services. Authority shall pay Physician a flat fee of \$150 per patient, less all applicable federal and state taxes and withholding requirements, performed in excess of Physician's standard eight (8) hour workday.

5.9 Chair Stipend. Authority shall pay Physician an annual stipend of \$961.53 biweekly, less all applicable federal and state taxes and withholding requirements, not to exceed \$25,000 annually for services as Joint Chair and Director of Department of Psychiatry for KMC and Kern County Behavioral Health and Recovery Services. Physician understands and agrees that he must remain in the position of Joint Chair and Director of Department of Psychiatry for KMC and Kern County Behavioral Health and Recovery Services as of each biweekly payout date in order to earn and receive the stipend payment.

5.10 Retention Bonus.

5.10.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings, payable within ten (10) days of August 16, 2024, and each August 16 thereafter during the Term if the conditions for Physician to receive the retention bonus are met.

5.10.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever during an Employment Year in which a retention bonus is paid, Physician will repay to Authority an amount equal to \$20,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

5.10.3 Offset. Physician hereby authorizes Authority to offset against and reduce any amounts otherwise due to Physician for any amounts in respect of the obligation to repay the retention bonus.

5.11 Professional Fee Billing.

5.11.1 Assignment. KMC shall have the exclusive right and authority to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Physician during the Term of this Agreement. All professional fees generated by Physician during the Term of this Agreement, including without limitation, both cash collections and accounts receivable, capitated risk pool fees, professional retainer fees, honoraria, professional consulting and teaching fees, and fees for expert testimony (but excluding Physician's private investment and nonprofessional income), will be the sole and exclusive property of KMC, whether received by KMC or by Physician and whether received during the Term of this Agreement or anytime thereafter. Physician hereby assigns all rights to said fees and accounts to KMC and shall execute all documents required from time to time by KMC and otherwise fully cooperate with KMC to enable KMC to collect fees and accounts from patients and third-party payers.

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

5.12 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$3,000,000 over the five (5) year Term of this Agreement.

6. **Benefits Package**.

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

6.2 Health Care Coverage. Physician shall continue to receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is twenty percent (20%) of the current biweekly premium. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least forty (40) hours per biweekly pay period to be eligible for coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Authority to Incur Financial Obligation. It is understood that Physician, in his performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.

10. Captions and Interpretation. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

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

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

13. Confidentiality. Physician shall maintain confidentiality with respect to information that he receives in the course of his employment and not use or permit the use of or disclose any such

information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.

14. **Conflict of Interest.** Physician covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of his services hereunder. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.

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

16. **[Reserved.]**

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

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than designated KMC Practice Sites without approval by the Kern County Hospital Authority Board of Governors, including, without limitation, outside activities beyond the scope of this Agreement and any services provided by Physician outside the Geographic Area, and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

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

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

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

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

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

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

Notice to Physician:

Mohammed A.S. Molla, M.D.
5400 Pelican Hill Drive
Bakersfield, California 93312

Notice to Authority:

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

25. **Relationship.** Authority and Physician recognize that Physician is rendering specialized, professional services. The parties recognize that each is possessed of legal knowledge and skill, and that this Agreement is fully understood by the parties, and is the result of bargaining between the parties. Each party acknowledges their opportunity to fully and independently review and consider this Agreement and affirm complete understanding of the effect and operation of its terms prior to entering into the same.

26. **Severability.** Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the state of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions

shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; or (xvi) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

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

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

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


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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

PHYSICIAN

By 
Mohammed A.S. Molla, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Molla.080823

EXHIBIT “A”
JOB DESCRIPTION
Mohammed A.S. Molla, M.D.

Position Description: Reports to Chief Medical Officer; serves as Joint Chair and Director of Department of Psychiatry for KMC and Kern County Behavioral Health and Recovery Services; serves as a full-time faculty member in the Department; provides no fewer than eighty (80) hours per pay period of service; day-to-day work activities and clinical workload shall include coverage within the Department; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of care, direct patient care, scholarly research, and resident education. Physician shall work collaboratively with Department faculty, staff and administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience. The Joint Chair is a working clinical position that models exemplary clinical outcomes and professional leadership behaviors.

Essential Functions:

A. Leadership and Administrative Responsibilities

- Serve in the leadership role as Joint Chair, including mentoring and professional development of all Department faculty, residents, fellows, and medical students
- Maintain and enhance excellence of the psychiatry residency and fellowship programs and accreditation by the RRC and ACGME
- Appoint and provide oversight of the psychiatry residency and fellowship program directors and curriculum
- Develop a Department culture that ensures prompt recognition of medical adverse events, prompt corrective action, and transparency with the organization including a culture that consistently focuses on patient care and patient safety
- Develop a Department culture that does not allow disruptive behavior
- Monitor individual physician clinical performance by tracking and trending outcomes, utilization of resources, adherence to established protocols, and document and counsel as appropriate
- Develop mechanisms to conduct patient care reviews objectively for the purpose of analyzing and evaluating the quality and appropriateness of patient care and treatment
- Responsible for preparing or delegating staff schedules and clinical assignments to maximize productivity and quality care and ensure that all faculty are present at KMC performing their assigned and scheduled clinical, teaching, and administrative duties
- Oversight of Department meetings, morbidity and mortality conferences
- Ensure leadership, structure and function of Department committees, including assigning faculty to appropriate committees and facilitating their involvement in hospital-wide quality and performance improvement programs
- Conduct annual performance evaluations of faculty
- Pursue further alignment with the University of California, Los Angeles (UCLA) in conjunction with all other KMC initiatives including specific alignment for the Department of Psychiatry with UCLA

- Serve as a member on the Medical Executive Committee and participate on Medical Staff and other hospital committees
- Participate in quality and system improvement initiatives, including improving patient satisfaction, enhancing timely access to care, and peer review within the Medical Staff and Department
- Collaborate with all other KMC Department Chairs
- Collaborate with KMC administration to enhance engagement with area health plans, community physicians, and members of the Medical Staff to improve patient care and overall volume growth
- Lead the clinical preparation, monitoring, review, and performance of clinical activity in the Department
- Develop a faculty succession and recruitment plan. In consultation with Department faculty, recruit and recommend to the Chief Executive Officer and Chief Medical Officer new faculty, after appropriate vetting, for faculty appointments in the Department
- Work collaboratively with other clinical departments to develop a cohesive and collaborative environment across clinical departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Support the development of the Simulation Laboratory and related education programs and curriculum
- Follow and comply with the Medical Staff Bylaws, Rules, Regulations, and policies
- Follow and comply with Authority and KMC policies and procedures
- Participate in clinical and administrative integration efforts across the hospital as appropriate for the Department ensuring proper program planning, resource allocation, analysis, communication, and assessment

B. Clinical Responsibilities

- Serve as an attending physician in the Department providing appropriate care within the scope of practice for a general psychiatry and/or child and adolescent psychiatry specialist while on service
- Supervise residents, fellows, and medical students
- Supervise Advance Practice Providers (APP) in the Department and ensure competence
- Supervise care performed by residents, fellows, and APP, while on service

C. Medical Education, Teaching, and Academic Responsibilities

- Serve as a core faculty member providing supervision and instruction to residents, fellows, and medical students
- Provide clinical mentoring to and evaluation of residents, fellows, and medical students
- Establish and maintain academic appointment at the David Geffen School of Medicine at UCLA
- Serve as a mentor to residents, fellows, and medical students who desire to conduct research or other scholarly activity
- Demonstrate active involvement in continuing education

- Demonstrate active involvement in presentations, publications, and other scholarly activity at local, regional and national scientific societies in accordance with RRC program requirements
- Support the activities of the residency and fellowship educational programs
- Participate in the development of Department curriculum
- Attend and participate in the weekly Department didactic sessions
- Deliver lectures as appropriate throughout the year

Employment Standards:

Completion of an accredited residency program in psychiatry; one (1) year of post-residency experience in psychiatry desirable

AND

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

AND

Certification by the American Board of Psychiatry and Neurology in psychiatry-general

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

[INTENTIONALLY LEFT BLANK]

**EXHIBIT “B”
SALARY SCHEDULE
Mohammed A.S. Molla, M.D.**

| Step Levels | Annual Salary | Effective Date |
|--------------------|----------------------|-----------------------|
| Step A | \$416,000 | August 16, 2023 |
| Step B | \$422,240 | August 16, 2024 |
| Step C | \$428,574 | August 16, 2025 |
| Step D | \$435,002 | August 16, 2026 |
| Step E | \$441,527 | August 16, 2027 |

[INTENTIONALLY LEFT BLANK]

EXHIBIT “C”
AUTHORIZATION TO RELEASE INFORMATION

[TO BE ATTACHED]

AUTHORIZATION TO RELEASE INFORMATION

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

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

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

A. d. molla, MD

Physician

08/11/2023

Date



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

August 16, 2023

Subject: Proposed Agreement with John B. Schlaerth, M.D., A California Medical Corporation, for professional medical services in the Department of Obstetrics and Gynecology

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Agreement with John B. Schlaerth, M.D., A Medical Corporation, for gynecologic oncology services in the Department of Obstetrics and Gynecology. Dr. Schlaerth has provided services as an independent contractor at Kern Medical since 2007. In addition to serving as Chief, Division of Gynecologic Oncology, Dr. Schlaerth provides services in the hospital and outpatient clinics, clinical mentoring to and evaluation of residents and medical students, and supports Kern Medical's cancer programs.

The agreement is for a term of two years from September 1, 2023 through August 31, 2025. Dr. Schlaerth is paid a fixed fee in the amount of \$33,334 per month for all services with a maximum payable not to exceed \$400,000 per year. Kern Medical has the exclusive right to set, bill, collect, and retain all professional fees for the services provided by Dr. Schlaerth.

Therefore, it is recommended that your Board approve the Agreement with John B. Schlaerth, M.D., A Medical Corporation, for professional medical services in the Department of Obstetrics and Gynecology from September 1, 2023 through August 31, 2025, with a maximum payable not to exceed \$800,000 over the two-year term, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – John B. Schlaerth, M.D., A Medical Corporation)**

This Agreement is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a public entity that is a local unit of government (“Authority”), and John B. Schlaerth, M.D., A Medical Corporation, a California professional medical corporation (“Contractor”), with its principal place of business located at 9010 Corbin Avenue, Suite 6, Northridge, California 91324.

**I.
RECITALS**

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

(b) Authority owns and operates Kern Medical Center (“KMC”), a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California (the “Premises”), in which is located the Department of Obstetrics and Gynecology (the “Department”); and

(c) Contractor is a California professional medical corporation with medical doctors (collectively, “Group Physicians” or individually, “Group Physician”) who provide services on behalf of Contractor; and

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

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

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

**II.
TERMS AND CONDITIONS**

1. **Term.** This Agreement shall be effective and the term shall commence as of September 1, 2023 (the “Effective Date”), and shall end August 31, 2025, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.
2. **Obligations of Contractor.**

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

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

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

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

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

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

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

2.2 Representations. Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

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

2.4 Performance Standard. Contractor shall perform all services hereunder in a manner consistent with the level of competency and standard of care normally observed by a

person practicing in Contractor's profession. If Authority determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of section 36; or (c) pursue any and all other remedies at law or in equity.

2.5 Assigned Personnel. Contractor shall assign only competent personnel to perform the Services hereunder. In the event that at any time Authority, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform the services hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Authority. Group Physicians providing services under this Agreement include, without limitation, John B. Schlaerth, M.D.

2.6 Qualifications of Group Physicians.

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

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

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

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

2.7 Rights and Duties. John B. Schlaerth, M.D., shall act as the authorized agent for Contractor in all matters relating to the performance of Group Physicians under this Agreement. Contractor shall cause Group Physicians to participate in the educational and committee activities of the KMC medical staff. Contractor shall, by contract, obligate Group Physicians to comply fully with all duties, obligations and restrictions imposed upon Contractor under this Agreement.

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

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

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

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

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

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

3. **Obligations of Authority.**

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

3.2 Space. KMC shall furnish for the use of Contractor and Group Physicians such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Neither Contractor nor Group Physicians shall use such space or equipment for other business or personal use.

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

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

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

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

4. **Payment for Services.**

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority will pay Contractor in accordance with the fee schedule set forth below in this paragraph 4.1. All services are payable in arrears.

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

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

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

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

4.2 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$800,000 over the two (2) year term of this Agreement.

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

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

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

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

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

6. **Anti-referral Laws.** Contractor acknowledges that it is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

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

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

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

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

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

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

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

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

15. **Confidentiality.**

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

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

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

15.4 Medical Staff and Committee Records. All records, files, proceedings and related information of Group Physicians, KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor and Group Physicians. Neither Contractor nor Group Physicians shall voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC.

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

15.6 **Non-disparagement.** Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

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

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

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

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

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

change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

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

22. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification required in 8 USCA section 1324a. Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section 22.

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

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

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

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

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

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

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

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

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

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

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

33. **Notices.** Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed

received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Contractor:

John B. Schlaerth, M.D.,
A Medical Corporation
9010 Corbin Avenue, Suite 6
Northridge, California 91324
Attn.: Its President

Notice to Authority:

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

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

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

36. **Termination.**

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

36.2 **Immediate Termination.** Authority shall have the right to terminate this Agreement at any time upon the occurrence of any one or more of the following events:

- A) Breach of this Agreement by Contractor where such breach is not cured within thirty (30) calendar days after Authority gives written notice of such breach to Contractor;
- B) Authority ceases operations;
- C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
- D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;

- E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;
- F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
- G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;
- H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;
- I) Violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject;
- J) Contractor makes an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC;
- K) Commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or
- L) The loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

37. **Effect of Termination.**

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

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

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

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

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

JOHN B. SCHLAERTH, M.D.,
A MEDICAL CORPORATION

By _____
John B. Schlaerth, M.D.
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Schlaerth.081123

EXHIBIT “A”

IRS FORM W-9

[TO BE ATTACHED]

EXHIBIT “B” INSURANCE

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by Authority. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

Authority reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers’ Compensation and Employers Liability Insurance:

- (a) Required if Contractor has employees. If Contractor currently has no employees, Contractor’s written confirmation of such will be required before execution of this Agreement. If Contractor engages any employees during the term of this Agreement or any extensions thereof, Contractor agrees to obtain the specified Workers’ Compensation and Employers Liability insurance.
- (b) Workers’ Compensation insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of Authority for all work performed by Contractor, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- (c) If Contractor has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.

- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
- (e) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 below for full Additional Insured wording.
- (f) The insurance provided to Authority as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by Authority.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between Authority and Contractor and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

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

5. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
- (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work*.
- (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of *five (5) years* after completion of the contract work.

7. Documentation:

- (a) The Certificate of Insurance must include the following reference: **“Agreement for Professional Services.”**
- (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2 or 3 above.
- (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
- (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.

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

9. Waiver of Subrogation: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.

10. Primary Coverage: For any claims related to this Agreement, Contractor’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Authority, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its officers, directors, officials, employees, or volunteers shall be excess of Contractor’s insurance and shall not contribute with it.

11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

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

August 16, 2023

Subject: Proposed Personal/Professional Services Agreement with Aspen Street Architects, Inc.

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Personal/Professional Services Agreement with Aspen Street Architects, Inc., to provide an analysis and report in compliance with the non-structural evaluation required by Senate Bill 1953 as known as the Seismic and Compliance Safety Act and 2022 California Code of Regulations.

The Agreement is effective August 16, 2023 through August 15, 2026, with a maximum payable not to exceed \$550,000.

Therefore, it is recommended that your Board approve the proposed Personal/Professional Services Agreement with Aspen Street Architects, effective August 16, 2023, with a maximum payable not to exceed \$550,000, and authorize the Chairman to Sign.

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

THIS SCHEDULE shall be effective on: August 16, 2023 ("**Effective Date**") and shall terminate no later than August 15, 2026 .
Kern County Hospital Authority Department: Construction ("Responsible KCHA Department")
Located at: 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.
Service Provider: Aspen Street Architects, Inc. ("Consultant") Located at: 494 N. Main Street, Angels Camp, CA 95222
Consultant is (select one): Sole Proprietorship
 Incorporated in the State of California.
 Other (specify) _____.

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

Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder, including any reimbursement of travel expenses and other costs incurred by Consultant under this Agreement, in an aggregate sum not to exceed \$550,000 of the Agreement and Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

(Select one of the following two)

KCHA shall **not** reimburse Consultant for any costs or travel expenses incurred by Consultant hereunder.
 KCHA shall reimburse Consultant for all necessary and reasonable actual costs or travel expenses incurred on behalf of KCHA. If the reimbursable expenses include travel, the travel expenses must be reasonable and necessary, approved in advance by the Responsible KCHA Department, and shall not exceed the following KCHA per diems: Lodging, \$116.00 per night plus tax; breakfast, \$14.00; lunch, \$16.00; dinner, \$26.00; economy rental car; and mileage, if by private automobile, at \$.56 per mile; and by common carrier at actual fare charged for economy or coach class. In an amount not to exceed \$ 5,000.

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

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

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

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

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

KERN COUNTY HOSPITAL AUTHORITY

APPROVED AS TO CONTENT:
Responsible KCHA Department

By: _____
Russell Bigler, Chairman, Board of Governors

By: _____
Scott Thygerson, Chief Executive Officer

"KCHA"

Date: _____

Date: _____

ASPEN STREET ARCHITECTS, INC.

APPROVED AS TO FORM:
Legal Services Department

By: 
Nathan Morgan

By: 
Hospital Counsel, Kern County Hospital Authority

"Consultant"

Date: 8/9/2023

Date: 8/10/23

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

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

RECITALS

- A. KCHA is authorized, pursuant to Section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and
- B. The KCHA Department identified on the Schedule as the Responsible KCHA Department requires those services which are specified in **Exhibit A**.
- C. KCHA desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.
- D. The Chief Executive Officer ("CEO") has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

AGREEMENT

1. **Services to be Rendered.** Consultant shall provide the services and products described in **Exhibit A** ("Services"). The Services performed by the Consultant shall be in accordance with and limited to the usual and customary manner observed by ordinary members and the similar professionals that are performing similar services on similar projects under similar conditions, the (Standard of Care).
2. **Compensation to Consultant.** KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.
3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.
4. **Term.** This term of this Agreement ("Term") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.
5. **Assignment.** Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO.
6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall permit KCHA to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as KCHA.
7. **Authority to Bind KCHA.** It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCHA to any agreements or undertakings.
8. **Indemnification.**

General. Consultant shall defend, indemnify, and hold harmless KCHA and KCHA's board members, elected and appointed officials, officers, employees, agents, and authorized volunteers ("KCHA Indemnified Parties") from losses, liabilities, charges, damages, claims, liens, awards, judgments, costs (including reasonable attorneys' fees ("Claims")) which arise out of or relate to any negligent act or omission of Consultant or Consultant's officers, employees, agents and subcontractors of any tier hired by Consultant to perform the Services ("Consultant Representatives"). This indemnification obligation shall include bodily and personal injury or death to any person; damage to any property, regardless of where located, including the property of KCHA; and any workers' compensation Claim arising from or relating to any Services. The indemnity obligation of the Consultant shall be limited to the provisions of California civil code section 2782.8.

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

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

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

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

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

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

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

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

a. **Expertise and Staff.** Consultant has the expertise, support staff and facilities necessary to provide the Services; and

b. **No Adverse Interests.** Consultant does not have any actual or potential interests adverse to KCHA, nor does Consultant represent a person or firm with an interest adverse to KCHA relating to the subject of this Agreement; and

c. **Timeliness.** Consultant shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. **Captions and Interpretation.** Section headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. California Civil Code Section 1654 shall not apply to the interpretation of this Agreement.

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

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

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

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

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

34. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

35. **Sole Agreement.** This Agreement, including the Schedule and Exhibits, contains the entire agreement of the Parties relating to the Services, rights, obligations and covenants contained in this Agreement and assumed by the Parties. No inducements, representations or promises have been made, other than those stated in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

36. **Time of Essence.** The timeliness of performance shall be governed by the Standard of Care under this Agreement and of each provision, and each provision is declared to be a material, necessary and essential part of this Agreement.

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

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

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

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

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

EXHIBIT A SERVICES

Consultant shall provide the Services indicated below for the Responsible KCHA Department based on the payment schedule and services set forth in each completed Work Authorization Form, the form of which is attached hereto as Exhibit B.

1. Full description of Services:

1.1 GENERAL SERVICES OF CONSULTANT

A. Consultant shall provide Architectural/Engineering Services for major maintenance and capital projects for KCHA facilities at intermittent intervals and shall be prepared to render services at any time and for any period KCHA may require. Consultant shall provide services pursuant to the issuance of a "Work Authorization" (the form of which is attached hereto and incorporated herein as Exhibit B) as required by KCHA's Construction Services Division.

B. Services shall be provided on an as-needed basis with dates to be determined by KCHA pursuant to a fully completed and properly executed Work Authorization Form. No work shall be initiated under this Agreement unless specifically approved by the Construction Services Division.

C. All services performed by Consultant shall be in conformity with this Agreement and shall be performed to the satisfaction of the Chief Executive Officer or his designee ("Director"). All work not conforming to all requirements will be reported to Consultant for resolution by Consultant.

D. Consultant shall coordinate all correspondence and communications regarding services to be provided under this Agreement through KCHA's Construction Services Division or their designee.

1.2 DESIGN SERVICES OF CONSULTANT

A. Schematic Design Phase:

Consultant shall consult with KCHA to ascertain project requirements.

Consultant shall prepare for KCHA's review and approval Schematic Design Studies and a general project description as it pertains to the architectural/engineering discipline(s) to be performed by Consultant.

Consultant shall estimate probable project construction cost, subject to revision at the Design Development Phase.

B. Design Development Phase:

Consultant shall prepare (from the approved Schematic Design Documents) Design Development Documents, and technical outline specifications. These documents shall include standards for and kinds of materials and include standards for compliance with the current California Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, Uniform Fire Code, California Administrative Code Titles 15, 19 and 24 and all State laws and County ordinances, rules of the State or County Health Departments, rules of the National Board of Fire Underwriters and National Fire Protection Associations, and local power company regulations as required for the architectural/engineering discipline(s) to be performed by Consultant.

Based on the KCHA approved plans developed in the Schematic Design Phase, the Consultant shall refine these final construction documents.

Consultant shall assist KCHA with submissions required for project approvals from appropriate public agencies. Consultant shall incorporate all modifications, changes or comments generated by these agencies on the Design Development Phase drawings.

Consultant shall return corrections, changes, etc., to KCHA within fifteen (15) days of receipt, or pursuant to such specific, written authorization from KCHA to exceed the fifteen (15) day response time.

C. Construction Document Phase:

Consultant shall prepare, from the approved Design Development Documents, working drawings and specifications, setting forth in detail the work to be done, the materials, workmanship, finishes, and equipment required for the architectural/engineering discipline(s) to be performed by Consultant.

Consultant shall assist KCHA with submissions required for project approvals from appropriate public agencies. Consultant shall incorporate all modifications, changes or comments generated by these agencies on the Construction Document Phase drawings.

Consultant shall notify KCHA whether there is an indicated material adjustment from previous estimates of the project construction cost arising from market fluctuations or approved changes in the Project's scope of requirements.

D. Construction Phase:

Consultant, following KCHA's approval of the Construction Documents, shall assist KCHA in obtaining bids from contractors including, but not limited to, responding to inquiries and preparing and responding to addenda requisite to obtaining bids and awarding the construction contract or contracts.

Consultant shall provide technical assistance and guidance to a Project Inspector to be employed by and be responsible to KCHA.

Consultant shall take reasonable precautions to secure the contractor's compliance with the contract requirements but does not guarantee the performance of contractor's contracts.

Consultant shall provide general administration of the Construction Contract, including attendance at construction meetings on site and such periodic visits at the site as KCHA deems necessary to assist in obtaining compliance with Contract Documents and endeavor to protect KCHA against defects or deficiencies in the work of the contractor; make regular reports as required by applicable public agencies; keep KCHA informed of construction progress; review and check schedules and shop drawings for compliance with design; review and make recommendations to KCHA for proposed substitutions of materials, equipment, products and systems; review and make recommendations to KCHA for submittal of product data and samples proposed for use; and review and forward to KCHA, within fifteen (15) working days after receipt, submittal of contractor's shop drawings of fabrication and installation details proposed for use, provided such submittals were requested in Construction Document working drawings and specifications.

Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, the safety precautions and programs in connection with the work, or the contractor's failure to carry out the work in accordance with the Contract Documents.

Consultant's services shall continue throughout the Construction Phase, notwithstanding any delays in construction of the Project. Consultant, as part of Consultant's services to KCHA, shall attempt to expedite the progress of the construction work by means of oral and written communications and by reference to agreed and accepted schedules. Consultant is not responsible for delays in construction occasioned by actions of the general contractor, or by anyone performing work for the contractor, pursuant to subcontracts or otherwise. KCHA will not pay additional compensation to the Consultant, or reimburse Consultant, for any expenses incurred as a result of construction delays.

Consultant, at no additional cost to KCHA, shall provide advice to KCHA on apparent deficiencies in project construction, which are discovered within one (1) year after the date of the Notice of Completion.

1.3 ADDITIONAL SERVICES OF THE CONSULTANT

The additional professional services listed in this section are not part of the basic services Consultant is to render pursuant to this Agreement.

Consultant agrees to render such of these additional services as the KCHA directs in a written authorization which shall include mutually agreed upon terms and conditions, including payment provisions, for rendering them; provided, however, that if the need for the additional services is caused by error, omission or neglect of Consultant or persons employed by Consultant in the rendition of the services required by this Agreement, Consultant shall render the directed additional services without charge or cost to KCHA:

A. Revisions and changes in approved documents except those which are required by public agencies other than KCHA as conditions for project approvals and are included within the requirements of the design development and construction document phases stated above.

B. Plan preparation for portions of Project construction work to be let on a segregated bid basis.

C. Services for repair of damage to the Project.

D. If directed by KCHA, the employment of special consultants and preparation of special delineations and models.

E. Providing detailed quantity surveys or inventories of materials, equipment and labor.

2. Consulting services shall be provided on an as needed basis to be determined by KCHA pursuant to a fully completed and properly executed Work Authorization Form.

3. If training is involved, the hours per day that are included in the training and minimum/maximum number of staff/trainees allowed to attend the training: N/A

4. Materials, equipment, facilities, manuals, study guides, etc., will be provided as indicated to assist the Consultant in provision of Services:

By Responsible KCHA Department:

A. KCHA shall be responsible for submission to all governing agencies for approvals.

B. KCHA shall provide information about the requirements for the Project, including realistic budget limitations and scheduling.

C. KCHA shall provide all necessary materials testing such as compaction tests and material sampling.

D. KCHA shall pay any required fees of public agencies having jurisdiction over approving the Project.

E. KCHA shall review documents submitted by Consultant and shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project.

F. KCHA shall provide bid and contract administration services.

G. KCHA shall furnish continuous inspection services.

H. KCHA shall furnish copies of existing information.

By Consultant:

N/A



Aspen Street ARCHITECTS

Architecture • Planning • Feasibility Studies

EXHIBIT A CONTINUED SERVICES

July 11, 2023

Nanette Crawford, Special Projects Manager
Construction Division of Engineering
Kern Medical Center
1700 Mt. Vernon Ave.
Bakersfield, CA 93306
(661) 428-4387
Nanette.crawford@kernmedical.com

Project Title: **NPC Nonstructural Evaluation, design proposal**

Nanette,

Aspen Street Architects is pleased to submit this proposal for professional design services related to the NPC Nonstructural Evaluation for the relevant campus buildings. The following is our proposed scope and fee. This proposal is based on discussions and information provided to date.

I. Proposed Services.

The goal of this project is to assist the Client with achieving compliance with the Non-structural evaluation deadline by January 1, 2024 per Senate Bill (SB) 1953 and 2022 California Administrative Code (CAC).

A. Non-structural Evaluation.

Kern Medical Center (Client) has an NPC compliance extension up to 2030, at which time the Facility will be required to meet NPC-5 requirements. To show progress toward this goal and maintain the extension active, the hospital owner is required to meet certain deadlines - the first being to submit to HCAI a complete Non-structural Evaluation Report up to NPC-4 and NPC-5, for each building subject to the request for extension. Further deadlines are in 2026 and 2028, for Construction Documents to mitigate the deficiencies required to achieve NPC-4 and NPC-5 compliance as identified in the Non-structural Evaluation Report, and then obtaining a building permit to begin construction for NPC-4 and NPC-5 compliance for the building.

As an option for compliance, HCAI introduced NPC-4D as a target performance level that will allow critical care facilities to operate beyond 2030 deadline. The NPC-4D rating reduces specific anchorage/ bracing requirements for critical care areas of the facility, and provides a multi-tiered level of compliance system for areas. NPC-4D is comprised of three (3) levels of compliance:

- Level 1- Requires compliance with NPC-3 for the critical care areas. And the facility must provide an Operational Plan documenting how certain functions will be maintained for 72 hours or services transferred.

- Level 2 - Requires Level 1 above (including an Operational Plan) and provide anchorage of utilities and services from their source to the critical care areas.
- Level 3 - Requires Level 2 above (including an Operational Plan) and upgrades to additional departments as determined by the hospital.

It is understood that the Client elects to pursue SPC-4D Level 1 at this time. This can later change, but the proceeding proposal assumes an evaluation to support a Level 1 status goal.

Scope of Work

Consultant's scope of services is identified below:

- Consultant to engage subconsultant engineer (structural) in the evaluation.
- Define Department Boundary/Critical Care areas (as well as Imaging, Radiology, Laboratory and Central and Sterile Supply):
 - Review Facility Departmental Plans to determine critical care areas. Define and depict NPC-3/Critical Care areas on floor plan.
- Record Drawing/Past Project Review:
 - Review tenant improvement (TI) project drawings on file and at the site to determine level of upgrade in the various critical care areas. Depending on whether certain systems were part of a previous project will determine what level of review they will get according to the criteria.
- Site Visit Documentation:
 - Within defined NPC-3 critical care areas/departmental boundaries, and where previous TI projects have been conducted, visit the site to verify current conditions.
 - Extent of survey to be within relevant spaces, and cursory above ceiling review. Client to provide access to spaces and above ceiling as needed. If more detailed above ceiling review/documentation is required, Client to utilize third party (contractor).
 - Meet with facility staff to determine and document any future projects that may impact critical care areas. This is where the thoughts on masterplanning play a role, in determining future use of the spaces.
- NPC-4D Level 1 Summary Plans and Matrix:
 - Develop plans and a matrix for each facility detailing the locations and extents (floor areas) of the NPC-3/Critical Care areas requiring upgrade.
 - Describe the level of work required for each area, following the categorized described above, (e.g. full upgrade, fire sprinkler bracing only, fully compliant).
 - Meet with Client to review information and assist in the development the NPC-4D Level 1 upgrade budget.
- Operational Plan
 - Assist Client in the development/generation of the operational plan. Client to be the lead in the development of the plan, Consultant to advise on requirements.
 - The plan may require the addition of a mechanical and/or electrical engineer. If required, this can be provided as additional services.

Actual construction documents for any required upgrades/bracing of systems found non-compliant is not included in the current scope. Intent of proposed scope is to develop submittal documents to meet Jan 1, 2024 requirements and provide input for cost estimating by others to determine impact of future upgrades.

- II. Timing: Goal for the **Non-structural Evaluation** is submittal in advance of the deadline of January 1, 2024. Coordination with Client is required to meet deadline.
- III. Additional Services. Any services not specifically provided for under Section I above shall be Additional Services.
- IV. Consultant's Compensation. In consideration for Consultant providing the services noted above, the Client agrees to compensate the Consultant on a basis as noted below, exclusive of customary reimbursable expenses, per attached rate sheet.

A. **Non-structural Evaluation**

| | | |
|-------------------|--------------|------------|
| architectural | Aspen Street | \$ 111,740 |
| structural | JAMA | \$ 124,800 |
| consultant markup | 15% | \$ 18,720 |
| total estimated | | \$ 255,260 |

fixed fee

Client will be billed monthly for services rendered. Payment is due upon receipt of invoice. Invoices which remain unpaid after thirty days are considered past due and subject to a service charge of 1.5% per month, which is an annual rate of 18%. If Client believes a billing error has occurred, or if Client requires additional information regarding an invoice, Client agrees to inform Consultant in writing within ten days of invoice date. If Client does not inform Consultant of any disputes within ten days, charges will be deemed correct.

This proposal is valid for the next 30 days. Please provide a written authorization to proceed with work if the above meets your approval. We can provide a proposed Professional Services Agreement as typical for these services if you do not have a contract form you wish to utilize.

Thank you for considering Aspen Street Architects for this project. We look forward to working with you.

Respectfully,

!:.!. n
President

EXHIBIT A-1

IRS FORM W-9

EXHIBIT B
FEE SCHEDULE



Aspen Street ARCHITECTS

Architecture • Planning • Feasibility Studies

**Aspen Street Architects, Inc.
Rate Schedule**

Hourly Rates for Professional Personnel

| | | | |
|---------------------|--------|-------------------------------------|--------|
| Principal/Architect | 240.00 | Certified Access Specialist (CASp) | 200.00 |
| Senior Architect | 230.00 | Senior Planner | 240.00 |
| Architect IV | 210.00 | Facilities Manager | 180.00 |
| Architect III | 180.00 | Sr Project Manager | 185.00 |
| Architect II | 160.00 | Project Manager | 165.00 |
| Architect I | 150.00 | | |
| Architect Intern II | 145.00 | Construction Contract Administrator | 130.00 |
| Architect Intern I | 135.00 | Project Administrator | 100.00 |
| Sr. Job Captain | 135.00 | | |
| Job Captain | 120.00 | | |
| Senior Production | 120.00 | | |
| Production | 105.00 | | |

Consultants Fees Under Contract:

Billed per consultant's invoice, plus 15% coordination fee.

Reimbursable Expenses Not Included in Contract:

| | |
|---------------------------------------|--------------|
| Engineering Xeroxes (white 24" x 36") | \$ 5.00/each |
| Engineering Xeroxes (white 30" x 42") | \$ 7.50/each |
| Color Printing (8.5"x11") | \$ 1.50/page |
| Color Printing {11"x17"} | \$ 2.75/page |
| Photocopies | \$ 0.20/each |
| Data Disc | \$ 2.50/each |
| Report Binding | \$ 5.50/each |

Miscellaneous reimbursable charges, including but not limited to, photographs, outside printing, maps, renderings, postage and freight will be billed at actual cost plus 15%. Travel expenses will be billed at actual cost plus 15%.

Clients will be billed monthly for services rendered. Payment is due upon receipt of invoice. Invoices which remain unpaid after thirty days are considered past due and subject to a service charge of 1.5% per month, which is an annual rate of 18%. If Client believes a billing error has occurred, or if Client requires additional information regarding an invoice, Client agrees to inform Aspen Street Architects in writing within ten days of invoice date. If Client does not inform Aspen Street Architects of any disputes within ten days, charges will be deemed correct.

The rates will remain in effect until December 31, 2023 and are subject to adjustment thereafter.

EXHIBIT "C" Insurance

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by KCHA. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

KCHA reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers' Compensation and Employers Liability Insurance:

- (a) Required if Consultant has employees. If Consultant currently has no employees, Consultant's written confirmation of such will be required before execution of this Agreement. If Consultant engages any employees during the term of this Agreement or any extensions thereof, Consultant agrees to obtain the specified Workers' Compensation and Employers Liability insurance.
- (b) Workers' Compensation insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of KCHA for all work performed by Consultant, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- (c) If Consultant has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.
- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
- (e) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between KCHA and Consultant and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability Insurance (Errors and Omissions):

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

[Intentionally left blank]

EXHIBIT E
ADDITIONAL TERMS APPLICABLE TO CONSTRUCTION/ENGINEERING AGREEMENTS

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

I. COMPLIANCE WITH LABOR STANDARDS

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

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

II. APPRENTICESHIP PROGRAM

1. Compliance Required

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

2. Certification of Approval

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

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

3. Fund Contributions

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

4. Apprenticeship Standards

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

III. SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

1. INSURANCE

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

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

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

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

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

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

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

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

2. INDEMNIFICATION

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



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

August 16, 2023

Subject: Proposed Agreement with McMurtrey Lince, Inc to provide HVAC services in the B and C wings of Kern Medical Hospital

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

Summary:

Kern Medical requests your Board's approval of the proposed Agreement with McMurtrey Lince, Inc., to install a new AC Unit at Central Supply.

The Agreement is effective as of August 16, 2023, with construction anticipated to be completed within three months of commencement. The projected construction cost for this project is \$385,423, which includes future change orders of up to 10% of the original contract price of \$350,384.

The original budget for this project was approved at \$410,221, with a construction estimate of \$275,000. All of the bids have now been received and Kern Medical is now projecting that the total project budget is estimated to be \$530,888, including the additional construction costs of this proposed Agreement. The updated project budget has increased by \$120,667, which includes the additional construction costs.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the Agreement, authorize Chairman to sign, and authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price of \$350,384 for approval of up to \$385,423.

DOCUMENT 00500

AGREEMENT

THIS AGREEMENT, dated this 16th day of August 2023, is by and between **McMurtrey Lince, Inc.**, whose place of business is located at **1025 Espee Street, Bakersfield, CA 93301** ("Contractor"), and the KERN COUNTY HOSPITAL AUTHORITY, a local unit of government (hereinafter "Owner and/or Authority"), acting under and by virtue of the authority vested in Owner by the laws of the State of California

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

B/C Wing AC Unit Replacement 10111

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

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

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

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum **three hundred fifty thousand, three hundred eighty-four dollars (\$350,384)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).
- B. Owner reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

- A. Contractor shall achieve Final Completion of the entire Work **60 Working Days**, as defined in Document 01422, from the Commencement Date.

ARTICLE 3 - LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

3.01 Liquidated Damage Amounts

- A. As liquidated damages for delay Contractor shall pay Owner one thousand dollars (\$1,000.00) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

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

ARTICLE 4 - CONTRACT DOCUMENTS

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

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

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

ARTICLE 5 – LIABILITY OF AUTHORITY

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

ARTICLE 6 – MISCELLANEOUS

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

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

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

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

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

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

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

APPROVED AS TO FORM:
Hospital Counsel

By 
Phillip Jenkins, Hospital Counsel

KERN COUNTY HOSPITAL AUTHORITY

By _____
Russell V. Judd, Chief Executive Officer

"AUTHORITY"

APPROVED AS TO CONTENT:
KERN MEDICAL HOSPITAL

By _____
Scott Thygerson, CEO

Contractor's Name

Type of Entity
corporation, partnership, sole proprietorship

By _____
Michael Fink, Senior Facility Director

By 
Signature

James McMurtry
Typed Name

VP/CEO
Title of Individual Executing Document on behalf of Firm

"CONTRACTOR"

NOTICE: CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND ARE REGULATED BY CONTRACTORS' STATE LICENSE BOARD. QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED

Rev. 0
April 12, 2014

TO THE REGISTRAR OF THAT BOARD, WHOSE ADDRESS IS: CONTRACTORS' STATE LICENSE BOARD,
1020 "N" STREET, SACRAMENTO, CALIFORNIA 95814.

END OF DOCUMENT



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

August 16, 2023

Subject: Proposed Agreement with James E. Thompson, Inc., dba JTS Construction for construction services installing new IT & Exam Room HVAC systems

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

Summary:

Kern Medical requests your Board's approval of the proposed Agreement with James E. Thompson, Inc., dba JTS Construction to install new AC Units at the IT Closet and two additional Pulmonary Exam Rooms.

The original approved project budget was \$110,200 for the IT Closet. In order to add two Pulmonary Exam Rooms, the total revised project budget is \$241,848, which is an increase of \$131,648.

The Agreement before your Board is effective as of August 16, 2023, with construction anticipated to be completed within three months of commencement. The projected construction cost for this project is \$189,750, which includes future change orders of up to 10% of the original contract price of \$172,500.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the Agreement, authorize Chairman to sign, and authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price of \$172,500 which is an approval of a possible total not to exceed of \$189,750.

DOCUMENT 00500

AGREEMENT

THIS AGREEMENT, dated this 16th day of August 2023, is by and between James E. Thompson, Inc., dba JTS Construction whose place of business is located at 7001 McDivitt Drive, with a mailing address of P.O. Box 41765, Bakersfield, CA 93384 ("Contractor"), and the KERN COUNTY HSOPITAL AUTHORITY, a local unit of government (hereinafter "Owner and/or Authority"), acting under and by virtue of the authority vested in Owner by the laws of the State of California

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

IT Closet & Exam Room AC Upgrades (10110)

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

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

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

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum **one hundred seventy-two thousand, five hundred dollars (\$172,500.00)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

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

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

2.02 Completion of Work

- A. Contractor shall achieve Final Completion of the entire Work **30 Working Days**, as defined in Document 01422, from the Commencement Date.

ARTICLE 3 - LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

3.01 Liquidated Damage Amounts

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

3.02 Scope of Liquidated Damages

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

ARTICLE 4 - CONTRACT DOCUMENTS

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

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

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

ARTICLE 5 – LIABILITY OF AUTHORITY

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

ARTICLE 6 – MISCELLANEOUS

- 6.01 Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01422 (Definitions) and will have the meaning indicated therein.
- 6.02 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 6.02 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under



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

August 16, 2023

SUBJECT: Proposed retroactive Agreement for Professional Services with G.L. Bruno Construction, Inc., for design, maintenance, and repair services.

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

Summary:

Kern Medical is requesting your Board's retroactive approval of the proposed Agreement for Professional Services with G.L. Bruno Construction, Inc., to provide general maintenance and repairs at Kern Medical and out-patient clinical spaces. The term of the Agreement is for three (3) years, effective July 21, 2023 through July 20, 2026, with a total maximum payable of \$450,000.

This agreement is retroactive due to a failure of the HVAC system, which occurred July 13-14, 2023 in patient rooms in the B and C wings of the hospital, which required these emergency repair services by G.L. Bruno Construction, Inc.

Therefore, it is recommended that your Board a make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the retroactive Agreement for Professional Services with G.L. Bruno Construction, Inc., effective July 21, 2023 through July 20, 2026, with a maximum payable of \$450,000, and authorize the Chairman to sign.

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

THIS SCHEDULE shall be effective on: July 21, 2023 ("Effective Date") and shall terminate no later than July 20, 2026.

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

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

Service Provider: G.L. Bruno Construction, Inc. ("Consultant") Located at: 855 M Street, Suite 1010, Fresno, CA 93721

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

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

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

(Select one of the following two)

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

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

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

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

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

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

KERN COUNTY HOSPITAL AUTHORITY

APPROVED AS TO CONTENT:
Responsible KCHA Department

By: _____
Russell Bigler, Chairman, Board of Governors

By: _____
Scott Thygerson, Chief Executive Officer

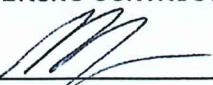
"KCHA"

Date: _____

Date: _____

G.L. BRUNO CONSTRUCTION, INC.

APPROVED AS TO FORM:
Legal Services Department

By: 
Michael C. Bogna, President/CEO
"Consultant"

By: 
Hospital Counsel, Kern County Hospital Authority

Date: 7/21/2023

Date: 8/10/23

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

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

RECITALS

A. KCHA is authorized, pursuant to Section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

B. The KCHA Department identified on the Schedule as the Responsible KCHA Department requires those services which are specified in **Exhibit A**.

C. KCHA desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.

D. The Chief Executive Officer ("CEO") has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

AGREEMENT

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

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

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

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

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

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

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

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

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

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

a. **Expertise and Staff.** Consultant has the expertise, support staff and facilities necessary to provide the Services; and

b. **No Adverse Interests.** Consultant does not have any actual or potential interests adverse to KCHA, nor does Consultant represent a person or firm with an interest adverse to KCHA relating to the subject of this Agreement; and

c. **Timeliness.** Consultant shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. **Captions and Interpretation.** Section headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. California Civil Code Section 1654 shall not apply to the interpretation of this Agreement.

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

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

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

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

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

34. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

35. **Sole Agreement.** This Agreement, including the Schedule and Exhibits, contains the entire agreement of the Parties relating to the Services, rights, obligations and covenants contained in this Agreement and assumed by the Parties. No inducements, representations or promises have been made, other than those stated in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

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

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

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

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

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

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

Exhibit A

SERVICES

Provide General Contracting services for various projects at Kern Medical and/or Clinic Sites on an as needed-when called upon basis.

Contractor shall provide a project specific quote for each project.

Consultant shall provide the Services Indicated below for the Responsible Authority Department based on the payment schedule and services set forth the attached Exhibits.

1. Full description of Services:

1.1 GENERAL SERVICES OF CONSULTANT

- A. Consultant shall provide Engineering Services for the S-1 Air Handler at Kern Medical.
- B. All services performed by Consultant shall be in conformity with this Agreement and shall be performed to the satisfaction of the Authority's Chief Executive Office or his designee ("Director"). All work not conforming to all requirements will be reported to Consultant for resolution by Consultant.
- C. Consultant shall coordinate all correspondence and communications regarding services to be provided under this Agreement through Authority's Construction Services Division of their designee.

1.2 DESIGN PHASE

Consultant shall prepare, working drawings and specifications, setting forth in detail the work to be done, the materials, workmanship, finishes, and equipment required for the engineering discipline(s) to be performed by Consultant.

Consultant shall assist KCHA with submissions required for project approvals from appropriate public agencies. Consultant shall incorporate all modifications, changes or comments generated by these agencies on the Construction Document Phase drawings.

Consultant shall notify KCHA whether there is an indicated material adjustment from previous estimates of the project construction cost arising from market fluctuations or approved changes in the Project's scope of requirements.

A. CONSTRUCTION PHASE

Consultant, following KCHA's approval of the Construction Documents.

Consultant shall provide technical assistance and guidance to a Project Inspector to be employed by and be responsible to KCHA.

Consultant shall provide general administration of the Construction Contract, including attendance at construction meetings on site and such periodic visits at the site as KCHA deems necessary to assist in obtaining compliance with Contract Documents and endeavor to protect KCHA against defects or deficiencies in the work of a contractor; make regular reports as required by applicable public agencies; keep KCHA informed of construction progress; review and check schedules

and shop drawings for compliance with design; review and make recommendations to KCHA for proposed substitutions of materials, equipment, products and systems; review and make recommendations to KCHA for submittal of product data and samples proposed for use; and review and forward to KCHA, within fifteen (15) working days after receipt, submittal of contractor's shop drawings of fabrication and installation details proposed for use, provided such submittals were requested in Construction Document working drawings and specifications.

Consultant's services shall continue throughout the Construction Phase, notwithstanding any delays in construction of the Project. Consultant, as part of Consultant's services to KCHA, shall attempt to expedite the progress of the construction work by means of oral and written communications and by reference to agreed and accepted schedules. Consultant is not responsible for delays in construction occasioned by actions of the general contractor, or by anyone performing work for the contractor, pursuant to subcontracts or otherwise. KCHA will not pay additional compensation to the Consultant, or reimburse Consultant, for any expenses incurred as a result of construction delays. Consultant, at no additional cost to KCHA, shall provide advice to KCHA on apparent deficiencies in project construction, which are discovered within one (1) year after the date of the Notice of Completion.

1.3 ADDITIONAL SERVICES OF THE CONSULTANT

The additional professional services listed in this section are not part of the basic services Consultant is to render pursuant to this Agreement.

Consultant agrees to render such of these additional services as the KCHA directs in a written authorization which shall include mutually agreed upon terms and conditions, including payment provisions, for rendering them; provided, however, that if the need for the additional services is caused by error, omission or neglect of consultant or persons employed by Consultant in the rendition of the services required by this Agreement, Consultant shall render the directed additional services without charge or cost to KCHA:

A. Revisions and changes in approved documents except those which are required by public agencies other than KCHA as conditions for project approvals and are included within the requirements of the design development and construction document phases stated above.

B. Plan preparation for portions of Project construction work to be let on a segregated bid basis.

C. Services for repair of damage to the project.

D. If directed by KCHA, the employment of special consultants and preparation of special delineations and models.

E. Providing detailed quantity surveys or inventories of materials, equipment and labor.

2. Consulting services shall be provided on an as needed basis to be determined by KCHA pursuant to a fully completed and properly executed Work Authorization Form.

3. If training is involved, the hours per day that are included in the training and minimum/maximum number of staff/trainees allowed to attend the training: N/A

4. Materials, equipment, facilities, manuals, study guides, etc., will be provided as indicated to assist the Consultant In provision of Services:

BY RESPONSIBLE KCHA DEPARTMENT:

- A. KCHA shall be responsible for submission to all governing agencies for approvals.
- B. KCHA shall provide information about the requirement for the Project, including realistic budget limitations and scheduling.
- C. KCHA shall provide all necessary materials testing such as compaction tests and material sampling.
- D. KCHA shall pay any required fees of public agencies having jurisdiction over approving the project.
- E. KCHA shall review documents submitted by Consultant and shall promptly render decisions pertaining thereto to avoid unreasonable delay in the Project.
- F. KCHA shall provide bid and contract administration services.
- G. KCHA shall furnish continuous inspection services.
- H. KCHA shall furnish copies of existing information.

By Consultant:

N/A

EXHIBIT A-1

IRS FORM W-9

Request for Taxpayer Identification Number and Certification

Give Form to the
 requester. Do not
 send to the IRS.

| | | | |
|---|--|--|---|
| Print or type See Specific Instructions on page 2. | 1 Name (as shown on your Income tax return). Name is required on this line; do not leave this line blank. G.L Bruno Associates, Inc. | | |
| | 2 Business name/disregarded entity name, if different from above | | |
| | 3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____ | | 4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i> |
| | 5 Address (number, street, and apt. or suite no.) 855 M Street Suite 1010 | | Requester's name and address (optional) |
| | 6 City, state, and ZIP code Fresno, CA 93721 | | |
| | 7 List account number(s) here (optional) | | |

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

| | | | | | | | | | | |
|--------------------------------|---|---|---|---|---|---|---|---|---|--|
| Social security number | | | | | | | | | | |
| | | | | | | | | | | |
| or | | | | | | | | | | |
| Employer identification number | | | | | | | | | | |
| 9 | 4 | - | 2 | 5 | 1 | 9 | 1 | 0 | 1 | |

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

| | | |
|------------------|----------------------------|-----------------------|
| Sign Here | Signature of U.S. person ▶ | Date ▶ 5/25/17 |
|------------------|----------------------------|-----------------------|

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.
Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (Interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*
- By signing the filled-out form, you:
- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
 - Certify that you are not subject to backup withholding, or
 - Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
 - Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

EXHIBIT B

FEE SCHEDULE



G. L. BRUNO CONSTRUCTION, INC.
EXHIBIT B - FEE SCHEDULE
(4-Hour Minimum)

7/21/2023

| TITLE | HOURLY FEE |
|-----------------------------------|------------|
| President/CEO | \$162 |
| VP Operations | \$119 |
| VP Development | \$119 |
| VP Construction | \$119 |
| Property Manager | \$115 |
| Controller | \$65 |
| AP/AR | \$58 |
| Marketing Director | \$58 |
| Development Project Manager | \$58 |
| Senior Project Manager | \$101 |
| Project Manager | \$72 |
| Project Engineer | \$58 |
| Contract Administrator | \$58 |
| General Superintendent | \$101 |
| Superintendent | \$139 |
| Estimator | \$65 |
| Foremen & MSDW Div Manager | \$66 |
| * Lead Carpenter/Framer | \$195 |
| * Carpenter/Framer | \$160 |
| * Lead Drywall Installer | \$195 |
| * Drywall Installer | \$160 |
| * Lead Drywall Finisher & Painter | \$188 |
| * Drywall Finisher & Painter | \$152 |
| * Lead Laborer | \$181 |
| * Laborer | \$146 |

* 1:1 Labor ratio for lead & tradesman

Note: On-Site Labor Includes DIR Labor Rates

CARPENTER/FRAMER: Metal Stud Framing; Minor Wood Framing; T-Bar & Acoustical Ceiling Tile; Insulation; Wall Guards; FRP; Corner Guards; Cubicle Curtain Tracks; Toilet Accessories; Anchoring Equipment.

DRYWALL FINISH & PAINTER: Includes Hilti-Certified Firestopping

LABORER: Infection Prevention Barriers; Interior Demo; General Labor

EXHIBIT "C" Insurance

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by KCHA. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

KCHA reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers' Compensation and Employers Liability Insurance:

- (a) Required if Consultant has employees. If Consultant currently has no employees, Consultant's written confirmation of such will be required before execution of this Agreement. If Consultant engages any employees during the term of this Agreement or any extensions thereof, Consultant agrees to obtain the specified Workers' Compensation and Employers Liability insurance.
- (b) Workers' Compensation insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of KCHA for all work performed by Consultant, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- (c) If Consultant has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.
- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
- (e) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "F" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between KCHA and Consultant and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability Insurance (Errors and Omissions):

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

[Intentionally left blank]

EXHIBIT E
ADDITIONAL TERMS APPLICABLE TO CONSTRUCTION/ENGINEERING AGREEMENTS

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

I. COMPLIANCE WITH LABOR STANDARDS

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

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

II. APPRENTICESHIP PROGRAM

1. Compliance Required

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

2. Certification of Approval

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

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

3. Fund Contributions

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

4. Apprenticeship Standards

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

III. SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

1. INSURANCE

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

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

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

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

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

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

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

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

2. INDEMNIFICATION

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



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

August 16, 2023

Subject: Proposed Retroactive Rental Contract #310753096 with H&E Equipment Services, Inc. to provide rental equipment for the Emergency Temporary Air Handler project

Recommended Action: Make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA guidelines; retroactively approve contract; Authorize Chairman to sign

Summary:

Kern Medical is requesting your Board's retroactive approval of the proposed Rental Contract #310753096 with H&E Equipment Services, Inc, to provide rental equipment for the emergency temporary air handler project.

This agreement is retroactive due to a failure of the HVAC system which occurred July 13-14, 2023, in patient rooms in the B and C Wings of the hospital, which required immediate repair.

This project was approved as an emergency project with the Department of Health Care Access and Information (HCAI), allowing the contractor to provide the equipment without a full set of approved plans.

Counsel is unable to approve the Contract due to non-standard terms and conditions, which include limitation of the vendors liability and limited warranties for the services provided. Due to the emergent nature of Kern Medical's need for the equipment, negotiation of terms did not occur.

Due to the immediate need of this Contract, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; retroactively approve the Rental Contract with non-standard terms, a not to exceed of \$1,871, and authorize the Chairman to sign.

Branch:
 Bakersfield (1054)
 8136 Golden State Highway
 Bakersfield, CA 93308-9583
 Phone: (661) 393-7824
 Fax: (661) 393-7847

Jobsite:
 Kern Medical
 1700 Mount Vernon Ave
 Bakersfield, CA 93306

| | |
|-------------------------|---------------------|
| Rental Contract | 310753096 |
| Customer # | 7127183 |
| Purchase Order # | |
| Ordered By | Nanette Crawford |
| Phone | (661) 428-4387 |
| Contract Date | 07/21/2023 |
| Date Out | 07/21/2023 08:00 AM |
| Est. Return Date | 07/21/2023 05:00 PM |
| Incoterms | H&E Delivery |
| Coordinator | MABROWN |

Customer:
 KERN MEDICAL
 1700 Mount Vernon Ave
 Bakersfield, CA 93306-4018

Jobsite Contact:
 Name: Nanette Crawford
 Phone: (661) 428-4387

Active Rental Items

| Qty | Equipment | Description | Meter Out | Day | Week | 4 Week | Est. Total |
|-----|-----------|---|-----------|------------|------------|------------|------------|
| 1 | 10330185 | Straight Boom 120-125' w/Jib Diesel GY-GENIE SX-125 XC SN: SX125D-1638 | 738 | \$1,364.00 | \$4,128.00 | \$9,905.00 | \$1,364.00 |

Misc./Sales Items

| Qty | Description | Price | UoM | Est. Total |
|-----|--------------------|----------|-----|------------|
| 1 | Pick Up Charge | \$150.00 | EA | \$150.00 |
| 1 | Environment Fee | | | \$27.14 |
| 1 | Loss Damage Waiver | | | \$204.60 |

| | |
|--------------------------------|-------------------|
| Est. Subtotal | \$1,745.74 |
| Est. Tax | \$114.77 |
| Est. Property Tax Recovery Fee | \$10.23 |
| Est. Total | \$1,870.74 |

*Actual charges based on rental amount. For information, see Section 5 of the Rental Agreement Terms and Conditions or visit he-equipment.com/resources
 Lessee will be charged for fuel usage, at a rate of \$9.50/gallon, upon return. Lessee is responsible for terminating the rental by calling (661) 393-7824. Pursuant to the terms and conditions of this agreement, Lessee must provide acceptable proof of insurance, and Lessee's failure to provide proof of insurance will trigger the applicable loss damage waiver provisions outlined on the reverse side. The charge for loss damage waiver, if imposed, will be 15% of the gross rental rate.
LESSEE LEASES THE EQUIPMENT ACCORDING TO THE RENTAL TERMS AND CONDITIONS ON BOTH SIDES OF THIS AGREEMENT.
Note, loss damage waiver is not insurance.
BY ACCEPTING DELIVERY OF THE EQUIPMENT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND TO THE PURCHASE OF A LOSS DAMAGE WAIVER WHERE APPLICABLE

_____ x _____ x _____
 Lessee-Customer's Signature Customer Name Printed Lessor-H&E Equipment Services/Date

If other than Lessee, signature represents he/she is agent of and authorized to sign Lessee.

TERMS AND CONDITIONS

READ CAREFULLY:

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(2) LIMITATION OF LIABILITY

(2) LIMITATION OF LIABILITY

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As outlined in the Privacy Policy, you may have to disclose personal or financial information to use certain functions on the website. In the event that such disclosure is necessary, you expressly acknowledge and represent that you have read the Privacy Policy and consent to the collection, use and disclosure of your personal information as described in the Privacy Policy. The terms of H&E’s Privacy Policy’s will change from time to time; in exchange for your use of the website or any of its features or services, you agree that you have reviewed and assent to the Privacy Policy.

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(7) TERMS RELATED TO SERVICES OFFERED ON OUR WEBSITE:

(a) ACCEPTANCE OF ORDERS

You may place orders via the website that results in an e-mail confirmation of the order request. Your receipt of an e-mail order confirmation does not constitute the acceptance of an order or a confirmation of an offer to sell. H&E reserves the right, without prior notification, to limit the order quantity on any item and/or refuse service to any customer. Verification of information may be required prior to the acceptance of any order.

H&E further reserves the right to cancel or refuse orders or requests for products or services listed with incorrect information (including, but not limited to incorrect price, rebate terms, refund terms, or any other incorrect information). This right exists whether or not the order has been confirmed, accepted, and you have been charged for the transaction.

(b) SALES CONDITIONS

In order to initiate or complete an order, purchase, sale, or request for service using this website, you acknowledge that you are at least eighteen (18) years old or the legal, recognized age of majority in your jurisdiction, and that you have no other impairments that would abrogate your consent to enter into the requested transaction. H&E reserves the right to cancel or refuse orders or requests for products or services if it learns or believes that an impairment exists that would abrogate your consent to enter into the requested transaction.

(c) CREDIT CARD AUTHORIZATION

In the event that your order or request for service requires use of a credit card, you agree to provide a valid credit card number with correct associated payment information including: (i) your name as it appears on the card, (ii) your credit card number, (iii) the credit card type, (iv) the date of expiration and (v) any activation numbers or codes needed to charge your card. Your submission of this information authorizes H&E to charge your card at our convenience but within thirty (30) days of credit card authorization. Furthermore, you warrant to H&E that you are the owner or an authorized user of that credit card. You further agree to indemnify, defend, and hold H&E harmless from any subsequent claim arising from use of your credit card in connection with this website (including, but not limited to, fraudulent use). YOU, AND SOLELY YOU, ARE RESPONSIBLE FOR PAYING ANY UNAUTHORIZED CHARGES OR AMOUNTS THAT ARE BILLED TO YOUR CREDIT CARD BY A THIRD PARTY. Moreover, by electing to use your credit card to initiate or complete an order on this website, you expressly and unequivocally grant H&E permission to contact your bank to verify your name, address, or any other information required to complete your request. All sales of products and services are final. All charges from those sales are nonrefundable.

(d) SALES TAX

H&E will charge any applicable taxes for orders in accordance with applicable local, state, and federal requirements.

(e) CUMULATIVE EFFECT WITH OTHER TERMS AND CONDITIONS

Note that most sales, rentals, or requests for credit are subject to terms and conditions. Nothing contained in these terms and conditions should be construed as a waiver or abrogation of any of the terms and conditions in any other contract that you may have with H&E. The obligations outlined in these terms and conditions are cumulative and in addition to the terms and conditions contained in any other such arrangement with H&E.

(f) PRICE CONTROL

H&E RESERVES THE RIGHT, AT ANY TIME, TO CHANGE ITS PRICES, BILLING METHODS, CREDIT REQUIREMENTS, INSURANCE REQUIREMENTS, OR ANY OTHER TERMS AND CONDITIONS RELATED TO PRODUCTS OR SERVICES THAT IT SELLS. ANY SUCH CHANGE IS EFFECTIVE IMMEDIATELY UPON POSTING ON THE SITE OR BY E-MAIL DELIVERY TO YOU.

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MISCELLANEOUS

H&E's delay or failure to take actions allowed under these terms and conditions shall not be construed as a waiver of any provision of these terms and conditions or any other terms and conditions in any other agreement between you and H&E. If any provision or part of any provision of these terms and conditions is invalid or unenforceable under applicable law for any reason, the remaining provisions or the remaining portions of the offending provision shall be deemed enforceable to the fullest extent possible (and severable in the event such provision is completely unenforceable).

These terms and conditions shall be governed by the laws of the State of Louisiana without regard to or application of any conflict of law provisions. You consent to the exclusive jurisdiction of the state and federal courts sitting in Baton Rouge, Louisiana. Any right that you may have under these terms and conditions are strictly personal rights that may not be transferred, assigned, or delegated to anyone or any other entity. Any attempt by you to assign, transfer, or delegate any rights that you may have under these terms and conditions shall be null and void. H&E may freely assign rights that it may have under these terms and conditions without consent or notice.

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

August 16, 2023

Subject: Proposed Price Agreement with Teleflex, LLC

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the proposed price agreement with Teleflex, LLC for purchase of urology surgery supplies. The term of this agreement is for eleven (11) months and would cost approximately \$120,000 for the length of the agreement.

This price agreement will continue Kern Medical's efforts to provide the necessary supplies to our surgeons for urology cases.

The Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to the vendor's limitation of liability and inability to provide indemnification. Efforts were made to negotiate these nonstandard terms to no avail. Due to the necessity of the products, Kern Medical believes the benefit outweighs the risk of moving forward with the Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve the proposed price agreement with Teleflex, LLC effective August 16, 2023, with a maximum not to exceed of \$120,000, and authorize the Chairman to sign.



ACORN
 BAXTER
 HUDSON RICHIE
 LIMA
 PILLOW
 RUSCH
 UROLIFT
 WEICK

Kern Medical Center
 PO Box 3519
 BAKERSFIELD CA 93306-4018
 USA

| Special Price Agreement | |
|---|----------------|
| Contract No. 50225955 Account No. 1280242 Kern Medical Center | Page 1 of 2 |

| Contract Type | Notification Type | Replacement for | Printed on | Contract Dates |
|---------------|-------------------|-----------------|------------|-----------------------|
| Direct | New | | 07/13/2023 | 04/01/2023-02/28/2024 |

Teleflex LLC is pleased to offer this pricing for purchases made directly through Teleflex LLC. This pricing is offered only for the account(s) listed herein. Teleflex LLC reserves the right to adjust this pricing at any time. Typographical errors are subject to correction. All purchases are subject to Teleflex LLC's Standard Terms and Conditions of Sale - Products (<https://www.teleflex.com/usa/en/legal/terms-and-conditions-of-sale/index.html>), which are incorporated herein by reference and shall take precedence over any different, additional or conflicting terms set forth in any customer purchase order or other document presented in connection with the purchase of products hereunder.

Additional Comments

| Material | Brand | Material Description | Units | SUoM | Qty/SUoM | Price USD | Valid From | Valid To |
|----------|----------|--|-------|------|----------|--------------|------------|------------|
| UL2-C | NeoTract | UroLift 2 Implant Cartridge | 1 | BX | 4EA/BX | 4,300.00 | 04/01/2023 | 02/28/2024 |
| UL2-CHK | NeoTract | UroLift 2 Implant Cartridge Handle Kit | 1 | BX | 1EA/BX | 1,075.00 | 04/01/2023 | 02/28/2024 |
| UL400ATC | NeoTract | UL400ATC Finished Device, Sterile, US | 1 | BX | 1EA/BX | 1,225.00 | 04/01/2023 | 02/28/2024 |



ANKAY
 BUNN
 HUDSON RCI
 IMA
 Valley
 RUSCH
 URULIFT
 WECK

| Special Price Agreement | |
|---|----------------|
| Contract No. 50225955 Account No. 1280242 Kern Medical Center | Page 2 of 2 |

Kern Medical
 Center PO Box
 3519
 BAKERSFIELD CA 93306-
 4018 USA

| Contract Type | Notification Type | Replacement for | Printed on | Contract Dates |
|--|---------------------|---|------------|-----------------------|
| Direct | New | | 07/13/2023 | 04/01/2023-02/28/2024 |
| <p>Teleflex LLC is pleased to offer this pricing for purchases made directly through Teleflex LLC. This pricing is offered only for the account(s) listed herein. Teleflex LLC reserves the right to adjust this pricing at any time. Typographical errors are subject to correction. All purchases are subject to Teleflex LLC's Standard Terms and Conditions of Sale - Products (https://www.teleflex.com/usa/en/legal/terms-and-conditions-of-sale/index.html), which are incorporated herein by reference and shall take precedence over any different, additional or conflicting terms set forth in any customer purchase order or other document presented in connection with the purchase of products hereunder.</p> | | | | |
| <p>Additional Comments</p> | | | | |
| Customer No. | Customer Name | Customer Address | Valid From | Valid To |
| 1280242 | Kern Medical Center | PO Box 3519 / Bakersfield CA 93306-4018 | 04/01/2023 | 02/28/2024 |



United States

Standard Terms and Conditions of Sale – Products

These standard terms and conditions of sale ("Terms") apply to all orders received from and all sales made to customer ("Customer") by Teleflex LLC ("Teleflex"), a Teleflex Incorporated company, for products ("Products"). Teleflex's offer to sell Products to Customer, and Teleflex's acknowledgment of any purchase order or other Customer document ("Order") is hereby expressly limited to and conditioned on Customer's acceptance of these Terms. The applicability of terms contained in Customer's Order is limited to the identification and the quantity of Products ordered. Teleflex objects to and rejects all other Customer terms, in any form, that are different from or additional to these Terms, except that if a written contract is already in effect between Teleflex and Customer for purchase of the ordered Products, the terms of that contract will prevail to the extent that those terms are inconsistent with these Terms. Teleflex reserves the right to change these Terms at any time without notice. Any Orders placed after these Terms are changed will be subject to the amended Terms.

1. **Credit Terms.** If Customer qualifies, Teleflex may extend credit to Customer after approval of credit application, in which case Customer shall pay for Products in full based on the payment terms specified in Teleflex's invoice. If at any time Customer's financial condition becomes unsatisfactory to Teleflex, in Teleflex's sole discretion, or if Customer fails to make any payment when due, in addition to any other rights Teleflex may have, Teleflex may defer or decline to make any shipments hereunder or may condition any such shipments on receipt of satisfactory security or cash payments in advance.
2. **Orders.** Order quantities must meet stated minimums for Products. Orders received with a value of less than \$250.00 will be subject to a handling charge of \$25.00. All Orders are subject to acceptance by Teleflex, which may be in writing or electronic record delivered to Customer or by shipping Products. Teleflex may accept any Order in whole or in part, and Teleflex's shipment of less than all Products ordered will constitute acceptance of the Order only as to those Products shipped. Customer may cancel a pending Order, in whole or in part, for Products (other than special order, private label or otherwise custom Products) only by written notice to Teleflex Customer Service prior to Teleflex processing the Order. Any request to cancel an Order after processing is subject to Teleflex's written approval, and Teleflex reserves the right to charge a restocking fee with respect thereto.
3. **Taxes.** Prices do not include any applicable taxes, tariffs, duties, fees, or charges of any type imposed by any governmental authority, whether federal, state, local or foreign, in connection with the Order. If applicable, a separate charge for any such taxes, tariffs, duties, fees or charges will be shown on Teleflex's invoice, and Customer is responsible for, and agrees to, their payment in full (unless when the Order is submitted Customer provides Teleflex with an exemption certificate or other documents satisfactory to Teleflex and acceptable to taxing or custom authorities). Customer shall reimburse Teleflex the amount of any such taxes, tariffs, duties, fees or charges that Teleflex is required to prepay.
4. **Delivery and Risk of Loss; Security Interest.** Except as otherwise expressly stated herein, all deliveries will be F.O.B. Teleflex's shipping point, and will be packed in Teleflex's standard commercial shipping packages. Title and risk of loss or damage will pass to Customer when Teleflex has delivered the Products to the carrier for shipment to Customer. Customer hereby grants to Teleflex, and its successors and assigns, a security interest in all Products until all amounts due or to become due under these Terms have been paid, and agrees, without further consideration, to execute and deliver all documents reasonably requested by Teleflex to perfect its security interest.
5. **Shipping.** All applicable shipping charges are the responsibility of Customer and will be prepaid by Teleflex and invoiced to Customer or paid directly by Customer. Shipping and delivery dates are estimates only. Teleflex reserves the right to fill Orders with multiple shipments. Products may be placed on backorder at Teleflex's sole discretion, and if Product availability is limited for any reason, Teleflex may fill orders or otherwise allocate Products in any manner it deems appropriate. Under no circumstances will Teleflex be liable for failure to deliver or for Customer's failure to receive Products by a certain date. Orders with requested shipment directly to a patient, temporary/mobile site or residential address will not be filled.
 - *Standard Freight Terms.* Teleflex will ship all Products via preferred standard ground service carriers with charges prepaid and invoiced to Customer and subject to the terms and conditions of Teleflex's Value Ship Program, available at www.teleflex.com/usa/services/value-ship/, unless Customer elects Collect terms in accordance with the procedures stated in the following paragraph. Customer is responsible for all applicable freight upgrades, including but not limited to any special level of service, handling or packaging, expedited freight charges, liftgate service and special delivery appointments, requested by Customer.
 - *Third-Party Freight Programs.* To opt out of Teleflex's Value Ship Program and participate in a third-party freight program, in which case applicable freight charges will be billed to Customer's designated third-party freight collect account, Customer must submit a written request of its election to Teleflex at cs@teleflex.com no later than 10 calendar days before expected implementation of the change. All election requests must include designation of a qualified carrier,

Teleflex LLC

3015 Carrington Mill Blvd Morrisville, NC 27560

Tel: (919) 544-8000 Fax: (919) 433-4995 Email: contractservices@teleflex.com www.teleflex.com

applicable billing information and a collect account number for each applicable Customer facility, and any other applicable special instructions for the third-party freight program. Following Teleflex's approval of the election request, Customer's account will be changed to Collect, and shipments will be subject to the fees and charges imposed by the designated carrier. Notwithstanding the foregoing, Teleflex reserves the right to change the terms applicable to Collect shipments to Prepaid and Add (using the list rates from the carrier selected by Teleflex at the time of shipment) if any applicable shipment is not collected within 24 hours of contacting Customer's designated carrier for pickup or that carrier fails to provide sufficient capacity for Customer's order volume or the requisite transportation equipment (i.e., trailers, cargo containers). Teleflex will not be liable for any disputed freight incorrectly charged if Customer fails to comply with the requirements stated herein.

- **Expedited Orders.** Expedited Orders are only processed when specifically requested by Customer at the time of ordering. Requests for expedited parcel Orders must be received by Teleflex before 2pm eastern time, and include the exact level of service requested (e.g., Second Day, Overnight, Overnight Early AM) and a valid address to which the designated carrier delivers. Expedited Orders are not eligible for free freight of any type, and Customer is responsible for all freight charges as prepaid and added to Teleflex's invoice, or through provision of a third-party collect account number. Teleflex assumes no liability for the reliability or outcome of requests for expedited Orders.
6. **Acceptance and Returns.** Customer shall inspect Products promptly upon their receipt. Any damage should be noted on the freight bill and reported to the carrier. Unless Customer notifies Teleflex Customer Service in writing within 10 calendar days after receipt of the Products of shipping discrepancies or that the Products are upon inspection non-conforming or defective, describing the alleged non-conformance or defect in reasonable detail, Customer will be deemed to have accepted the Products. Products delivered and accepted under these Terms are not returnable except in accordance with Teleflex's Return Goods Policy, available at www.teleflex.com/usa/en/legal/terms-and-conditions-of-sale/.
 7. **Payment Terms.** Customer shall pay the amount stated on Teleflex's invoice within 30 calendar days from the invoice date unless otherwise expressly stated in these Terms. All amounts payable under these Terms are denominated in the currency invoiced unless expressly agreed otherwise by Teleflex in writing. Customer shall promptly notify Teleflex Customer Service at cs@teleflex.com in writing of any disputed invoice, and shall not make any discounts or setoffs against any invoices unless approved in advance by Teleflex. Teleflex reserves the right to exercise any of its lawful remedies if Customer fails to make payments when due, and Customer shall promptly reimburse Teleflex for all costs and expenses. Customer will be subject to a fee of \$50.00 for any checks returned unpaid to Teleflex for any reason.
 8. **Force Majeure.** Each of Teleflex and Customer will be excused from any default in its obligations under these Terms, other than the payment of money due, resulting from any act or event beyond its reasonable control, including but not limited to acts of God, accident, fire, flood, storm, riot, war, sabotage, explosion, strike, lockout, labor disturbance, pandemic, epidemic, governmental action, inability to obtain raw materials, labor, component products or transportation, failure of normal sources of supply, or any similar or different contingency that would make performance or timely performance commercially impracticable. The party relying on any of these acts or events of force majeure shall notify the other thereof promptly after it becomes known to that party. If any of these acts or events of force majeure exceed 60 calendar days, then either party may, as its sole remedy, cancel outstanding Orders to the extent not previously fulfilled by notifying the other party in writing. Neither party will be liable for damages resulting from such cancellation.
 9. **Limited Warranty.** Unless a more specific limited warranty is expressly granted in the Instructions For Use, or Operating Manual if applicable, published by Teleflex for the Product ("Product Documentation") (in which case such warranty governs), Teleflex warrants that, subject to the exceptions stated herein, each Product will substantially conform to the published specifications contained in the Product Documentation and will be free from defects in materials and workmanship, from the date of purchase until the expiration date printed on the Product's packaging or, if no such expiration date applies, for one year from the date of purchase (as applicable, the "Warranty Period"). The foregoing warranty will be void and of no effect if the Product is: (a) stored, installed, maintained, operated or used in any manner inconsistent with the Product Documentation, (b) subjected to abuse, misuse, neglect, mishandling, accident or unusual physical or environmental (including but not limited to thermal or electrical) stress; or (c) repaired, altered or modified other than by Teleflex authorized service personnel.

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PRODUCTS PURCHASED FROM OTHER THAN TELEFLEX OR ITS LIMITED AUTHORIZED DISTRIBUTION NETWORK, SUCH AS THROUGH BROKERS, INDEPENDENT DISTRIBUTORS OR ONLINE MARKETPLACES (SOMETIMES REFERRED TO AS THE "GRAY MARKET"), MAY BE COUNTERFEIT, MODIFIED, BEYOND TELEFLEX'S RECOMMENDED SHELF LIFE, OR IMPROPERLY STORED OR HANDLED. TELEFLEX DOES NOT PROVIDE, AND EXPRESSLY DISCLAIMS, ANY WARRANTY COVERAGE OR CUSTOMER SUPPORT FOR SUCH PRODUCTS PURCHASED FROM ANY SOURCE EXCEPT TELEFLEX OR ITS AUTHORIZED DISTRIBUTORS.

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11. **Unauthorized Distribution; Import/Export; Export Control.** Unless authorized by Teleflex in writing in advance, Customer shall not resell or distribute Products outside the country to which Teleflex ships Customer's Order. The sale of Products in violation of this section voids Teleflex warranties to the extent permitted by applicable law. If Customer is outside the United States and approved by Teleflex to import Products at the final intended destination, then Customer will be responsible for obtaining all required import licenses and making proper customs entry for the Products. For routed export shipments out of the United States, Customer is responsible for meeting applicable United States export regulations and declarations. Customer shall not re-export any Products from the destination country. Customer further acknowledges that the Products and any related software and technical information provided under these Terms are subject to U.S. and other export laws and regulations. Customer shall not export, re-export, transfer or transmit the Products, or any such software or technical information, except in compliance with all such laws and regulations. At Teleflex's request, Customer shall sign written assurances and other export-related documents as may be required for Teleflex to comply with export laws and regulations.
12. **Intellectual Property Ownership.** Subject to any license necessary for Customer's use of a Product that incorporates software, no transfer of any right, interest, ownership or any intellectual property will occur under these Terms. Teleflex or, if applicable, Teleflex's licensor retains all interest to software, modifications, improvements, upgrades, derivative works and all other intellectual property rights in connection with the software incorporated in or used by the Products. Customer will have no right to or interest in any Teleflex intellectual property, including but not limited to copyrights, trade secrets, know how, patents, websites, internet domain name registrations, trademarks or trade names, applied for, owned, used or claimed now or in the future by Teleflex, its affiliates or licensors.
13. **Safe Medical Device Act.** If Customer files with the U.S. Food and Drug Administration ("FDA") an FDA Form 3500A or a similar form of medical device report under the federal Safe Medical Device Act, regarding the Products or any part of the Products, then Customer shall simultaneously furnish to Teleflex a copy of the form or report. Customer shall maintain adequate tracking for the Products to enable Teleflex to meet the FDA requirements applicable to tracking of medical devices. If Teleflex recalls the Products or any part of the Products, Customer shall cooperate fully with Teleflex in implementing the recall, including but not limited to by returning the Products to Teleflex to the extent that Teleflex requests.
14. **Fraud and Abuse.** Each party represents that it has never been debarred, excluded or suspended by the Office of Inspector General of the Department of Health and Human Services; otherwise deemed ineligible to participate in federal healthcare or procurement programs, or to the extent applicable, state healthcare or procurement programs; or convicted of a criminal offense regarding health care reimbursement.

- 15. Discount Reporting Obligations.** If the pricing offered to Customer hereunder constitutes "a discount or other reduction in price" for purposes of the federal Anti-Kickback Statute ("AKS") discount exception (42 U.S.C. §1320a-7b(b)(3)(A)) and the AKS discount safe harbor (42 C.F.R. §1001.952(h)), Customer shall disclose the discount or reduction in price to the full extent required under any state or federal program that provides cost or charge-based reimbursement to Customer for Products. Customer may also be required, upon request, to provide documentation of the discount or other reduction in price to the Secretary of the Department of Health and Human Services and/or state agencies. Customer shall make written request to Teleflex if Customer requires additional information from Teleflex to meet its reporting requirements.
- 16. Access to Books and Records.** Until the expiration of four years after the furnishing of services under these Terms, Teleflex shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, these Terms and such books, documents and records of Teleflex as are necessary to certify the nature and extent of the costs under these Terms. If Teleflex carries out any of its duties under these Terms through a subcontract, for the value or cost of \$10,000 or more over a 12-month period, the subcontract must contain a clause placing the same duty on the subcontractor as these Terms place on Teleflex. If applicable law or regulations are effectively amended to increase or decrease the annual amount necessary to require this clause, the amount stated herein will be amended accordingly. Notwithstanding the presence of this section in these Terms, this section only applies if the actual dollar amount paid during any 12-month period equals or exceeds the government threshold amount.
- 17. Confidentiality.** Teleflex may disclose confidential information to Customer, including but not limited to invoice terms, Product pricing and new product introductions. Customer shall not use, publish or disclose, or cause anyone else to use, publish or disclose, such confidential information without Teleflex's prior written consent, except information subject to legal process or if Customer can demonstrate the information was already known to, independently developed by, or publicly available to Customer prior to Teleflex's disclosure, or as otherwise permitted by these Terms. If disclosure is required by law, Customer agrees to provide prompt notice to Teleflex before any disclosure.
- 18. Applicable Law and Venue.** These Terms and the transactions contemplated hereby are governed by, and to be construed in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law principles thereof. The United Nations Convention on Contracts for the International Sale of Goods will not, for any purpose, govern or apply to the sale of any Products hereunder. Any legal action relating to the Products shall be commenced and maintained exclusively before the Pennsylvania state court of record in Montgomery County, Pennsylvania, or the United States District Court for the Eastern District of Pennsylvania. By purchasing the Products, Customer hereby submits to the jurisdiction of those courts and waives any right to challenge or otherwise raise questions of personal jurisdiction or venue in any action commenced or maintained therein. Each party hereby waives any right to jury trial in connection with any legal action in any way arising out of or related to these Terms.
- 19. Assignment; No Third-Party Beneficiaries.** Customer shall not transfer or assign these Terms or any interest herein, by operation of law or otherwise, without Teleflex's prior written consent. Any attempted transfer or assignment without such consent will be void. Teleflex may assign its rights and delegate its duties under these Terms. The rights and remedies conferred under these Terms apply only to Teleflex and Customer and are not to be construed to inure to the benefit of or to provide any right of action to any other person or entity, including but not limited to any patient or third-party payor.
- 20. Miscellaneous.** These Terms contain the entire agreement and supersede any prior written or oral agreements or understandings, between Teleflex and Customer regarding the subject matter hereof. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of these Terms. No failure by Teleflex to insist on strict performance of any of term or condition hereof will constitute a waiver of such term or condition or any breach thereof, nor will such failure in any way affect Teleflex's legal remedies regarding any default by Customer hereunder. No addition to or waiver, modification, or cancellation of any provision of these Terms will be binding upon Teleflex unless in writing and signed by a duly authorized representative of Teleflex. If any provision of these Terms is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will, to the extent permitted by law, not in any way be affected or impaired thereby.
- 21. Vendors may be required to provide proof of insurance for one or more of the following types of insurance coverages as determined by KCHA:**
- (a) Workers' Compensation Insurance in accordance with the provisions of section 3700 of the California Labor Code. This policy shall include employer's liability insurance with limits of at least one million dollars (\$1,000,000). Include a cover sheet stating the business is a sole proprietorship, if applicable.
 - (b) Commercial General Liability Insurance in the minimum amounts indicated below or such additional amounts as may be determined by the KCHA Risk Manager, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any agreement/order with KCHA), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of vendor's performance of work hereunder. The amount of said insurance coverage required hereunder shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

Teleflex LLC

3015 Carrington Mill Blvd Morrisville, NC 27560

Tel: (919) 544-8000 Fax: (919) 433-4995 Email: contractservices@teleflex.com www.teleflex.com

- (c) Professional Liability (Errors and Omissions) Insurance for liability arising out of, or in connection with the performance of all required services under this agreement/quote/order, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate unless otherwise indicated by KCHA's Risk Manager.

The Commercial General Liability Insurance shall include an endorsement naming KCHA and KCHA's board members, officials, officers, agents, and employees as additional insureds. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-;VII. All insurance provided by Vendor hereunder shall be primary to and not contributing to any other insurance maintained by KCHA. Any exception to these requirements must be approved by KCHA's Risk Manager. KCHA's Risk Manager may require higher limits depending on the nature of the goods and/or services being provided. All insurance coverage requirements shall be maintained by vendor until completion of all of vendor's obligations to KCHA, and shall not be reduced, modified, or canceled without 30 days prior written notice to the Chief Executive Officer ("CEO").

Vendor will indemnify, defend, and hold harmless KCHA, including KCHA's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and permitted assigns, from and against any claim, demand, cause of action, debt, liability, loss, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) arising out of a third party claim for bodily injury, death or property damage but only to the extent caused by (i) a defect in a Product manufactured by Vendor; (ii) Vendor's breach of this Agreement; or (iii) by Vendor's negligence or willful misconduct. Vendor is not required to indemnify KCHA to the extent that any claim arises out of KCHA's negligence or willful misconduct or use of a Product by any person or entity other than in accordance with Vendor-approved Product labeling.

- 22. Non-collusion Covenant. Vendor 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/quote/order with KCHA. Vendor has received no incentive or special payments, nor considerations, not related to the provision of services under this agreement/quote/order from KCHA.
- 23. Disqualified Persons. Vendor represents and warrants that no person providing goods and/or services under the terms of this agreement/quote/order (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General ("OIG") and provided proof of such reinstatement to KCHA), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Vendor agrees that if any individuals providing goods and/or services under the terms of this agreement/quote/order becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an "Enforcement Action"), Vendor shall immediately notify KMC and such individual shall be immediately removed by Vendor from any functions involving (i) the claims development and submission process, and (ii) any healthcare provider contact related to KMC patients; provided, however, that if Vendor is directly involved in the Enforcement Action, any agreement between KCHA and Vendor shall terminate immediately.
- 24. The liabilities or obligations of KCHA with respect to its activities pursuant to this agreement/quote/order shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

AGREED AND ACCEPTED:

Kern Medical Center (authorized representative)

Teleflex LLC (Interventional Urology) (authorized representative)

Name

Name

Title

Title

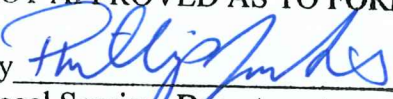
Signature

Date

Signature

Date

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By 
Legal Services Department



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

August 16, 2023

Subject: Proposed retroactive approval of Amendment No. 1 to the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board retroactively approve proposed Amendment No. 1 to the 401(a) Defined Contribution Plan for Management, Mid-Management and Confidential (MMC) Employees. The MMC employees participate in this Plan as opposed to KCERA, the county-sponsored pension plan. Your Board first adopted the Plan on November 14, 2018.

With the approaching termination of the agreements with Meridian Healthcare Partners, Inc. and Cantu Management Group, Inc., and the hiring of one or more Meridian employees in July, the employees of these two entities will be afforded the opportunity to apply for same or similar positions at Kern Medical. The current Plan documents do not provide for recognition of service with other employers. The proposed Amendment will permit such recognition of years worked at Kern Medical by the employees of Meridian and Cantu *for vesting purposes only*.

There is no cost to Kern Medical to permit vesting of these individuals should they choose to continue working at Kern Medical as Kern Medical employees.

The changes to the Plan documents, which include the Adoption Agreement for Voya Retirement Insurance and Annuity Company, are effective July 1, 2023, and will remain in effect unless otherwise modified or canceled by your Board.

Therefore, it is recommended that your Board retroactively approve Amendment No. 1 to Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees, amending the section of the Adoption Agreement entitled Recognition of Service with Other Employers, and authorize the Chairman to sign.

**AMENDMENT NUMBER ONE TO THE
KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT
AND CONFIDENTIAL EMPLOYEES**

BY THIS AGREEMENT, Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees (herein referred to as the "Plan") is hereby amended as follows effective July 1, 2023, except as otherwise provided herein:

1. The section of the Adoption Agreement entitled "RECOGNITION OF SERVICE WITH OTHER EMPLOYERS" is amended as follows:

- A. No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 16).
- B. Service with the designated employers is recognized as follows (select c. – e. and one or more of columns 1. - 3.; chose other options as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option h. under Section B of Appendix A):

| | 1. | 2. | 3. |
|--|--------------------|----------------|--------------------------------|
| Other Employer | Eligibility | Vesting | Contribution Allocation |
| C. <input checked="" type="checkbox"/> Employer name: <u>Meridian Healthcare Partners, Inc.</u> | [] | [X] | [] |
| D. <input checked="" type="checkbox"/> Employer name: <u>Cantu Management Group, Inc.</u> | [] | [X] | [] |
| E. <input type="checkbox"/> Employer name: _____ | [] | [] | [] |

Limitations

- F. The following provisions or limitations apply with respect to the recognition of prior service: _____
(e.g., credit service with X only on/following 1/1/19)
- G. The following provisions or limitations apply with respect to the recognition of service with other employers: _____
(e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.40 and 1.55 regardless of any selections above.

The Employer executes this Amendment on the date specified below.

Kern County Hospital Authority

Date: _____

By: _____
EMPLOYER

**AMENDMENT NUMBER ONE TO
KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT
AND CONFIDENTIAL EMPLOYEES**

**SUMMARY PLAN DESCRIPTION
MATERIAL MODIFICATIONS**

**I
INTRODUCTION**

This is a Summary of Material Modifications regarding the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees ("Plan"). Unless stated otherwise, the modifications described in this summary are effective as of July 1, 2023. This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description ("SPD") previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

**II
SUMMARY OF CHANGES**

1. ARTICLE IV - VESTING:

What service is counted for vesting purposes?

Service with another Employer. For vesting purposes, your Years of Service with Meridian Healthcare Partners, Inc. and Cantu Management Group, Inc. will be counted.

Contact the Plan Administrator for additional information if you are not sure if this affects you.

ADOPTION AGREEMENT FOR
VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY
NON-STANDARDIZED
GOVERNMENTAL 401(a) PRE-APPROVED PLAN

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: Kern County Hospital Authority

Address: 1700 Mt. Vernon Avenue

Street

Bakersfield California 93306

City

State

Zip

Telephone: (661) 862-7564

Taxpayer Identification Number (TIN): 47-5618278

Employer's Fiscal Year ends: June 30th

2. TYPE OF GOVERNMENTAL ENTITY. This Plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

- a. [] State government or state agency
b. [X] County or county agency
c. [] Municipality or municipal agency
d. [] Indian tribal government (see Note below)

NOTE: An Indian tribal government may only adopt this Plan if such entity is defined under Code §7701(a)(40), is a subdivision of an Indian tribal government as determined in accordance with Code §7871(d), or is an agency or instrumentality of either, and all of the Participants under this Plan employed by such entity substantially perform services as an Employee in essential governmental functions and not in the performance of commercial activities (whether or not an essential government function).

3. PARTICIPATING EMPLOYERS (Plan Section 1.39). Will any other Employers adopt this Plan as Participating Employers?

- a. [X] No
b. [] Yes

MULTIPLE EMPLOYER PLAN (Plan Article XI). Will any Employers who are not Affiliated Employers adopt this Plan as part of a multiple employer plan (MEP) arrangement?

- c. [X] No
d. [] Yes (Complete a Participation Agreement for each Participating Employer.)

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Question 9.)

4. PLAN NAME:

Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees

5. PLAN STATUS

- a. [] New Plan
b. [X] Amendment and restatement of existing Plan
CYCLE 3 RESTATEMENT (leave blank if not applicable)

- 1. [X] This is an amendment and restatement to bring a plan into compliance with the legislative and regulatory changes set forth in IRS Notice 2017-37 (i.e., the 6-year pre-approved plan restatement cycle).

6. EFFECTIVE DATE (Plan Section 1.16) (complete a. if new plan; complete a. AND b. if an amendment and restatement)

Initial Effective Date of Plan (except for restatements, cannot be earlier than the first day of the current Plan Year)

- a. November 14, 2018 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below)

Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

- b. July 1, 2023 (enter month day, year; NOTE: The restatement date may not be prior to the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

7. PLAN YEAR (Plan Section 1.43) means, except as otherwise provided in d. below:

- a. the calendar year
- b. the twelve-month period ending on _____ (e.g., June 30th)

SHORT PLAN YEAR (Plan Section 1.47). This is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 14):

- c. N/A
- d. beginning on _____ (enter month day, year; e.g., July 1, 2020) and ending on _____ (enter month day, year).

8. VALUATION DATE (Plan Section 1.53) means:

- a. every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
- b. the last day of each Plan Year
- c. the last day of each Plan Year quarter
- d. other (specify day or days): _____ (must be at least once each Plan Year)

NOTE: The Plan always permits interim valuations.

9. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER

(If none is named, the Employer will be the Administrator (Plan Section 1.2).)

- a. Employer (use Employer address and telephone number)
- b. The Committee appointed by the Employer (use Employer address and telephone number)
- c. Other:

Name: _____

Address: _____

Street

City State Zip

Telephone: _____

10. TYPE OF PLAN (select one)

- a. Profit Sharing Plan.
- b. Money Purchase Pension Plan.

11. CONTRIBUTION TYPES

The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.

FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)

- a. This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):
 - 1. All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select prior contributions at g. - j. (optional), skip questions 12-18 and 22-30)
 - 2. All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - f.)

Effective date

- 3. as of _____ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CURRENT CONTRIBUTIONS

The Plan permits the following contributions (select one or more):

- b. **Employer contributions other than matching** (Questions 24-25)
 - 1. This Plan qualifies as a Social Security Replacement Plan (Question 24.e. must be selected)
- c. **Employer matching contributions** (Questions 26-28)
- d. **Mandatory Employee contributions** (Question 30)

- e. **After-tax voluntary Employee contributions**
- f. **Rollover contributions** (Question 36)

PRIOR CONTRIBUTIONS

The Plan used to permit, but no longer does, the following contributions (choose all that apply, if any):

- g. **Employer matching contributions**
- h. **Employer contributions other than matching contributions**
- i. **Rollover contributions**
- j. **After-tax voluntary Employee contributions**

ELIGIBILITY REQUIREMENTS

- 12. ELIGIBLE EMPLOYEES (Plan Section 1.17) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan: (select a. or b.)
 - a. **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 13).
 - b. **Exclusions.** The following Employees are not Eligible Employees for Plan purposes (select one or more):
 - 1. Union Employees (as defined in Plan Section 1.17)
 - 2. Nonresident aliens (as defined in Plan Section 1.17)
 - 3. Leased Employees (Plan Section 1.29)
 - 4. Part-time Employees. A part-time Employee is an Employee whose regularly scheduled service is less than _ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.55).
 - 5. Temporary Employees. A temporary Employee is an Employee who is categorized as a temporary Employee on the Employer’s payroll records.
 - 6. Seasonal Employees. A seasonal Employee is an Employee who is categorized as a seasonal Employee on the Employer’s payroll records.
 - 7. Other: excluding anyone that is not classified as Management, Mid-Management and Confidential Employees. (must be definitely determinable under Regulation §1.401-1(b). Exclusions may be employment title specific but may not be by individual name)

NOTE: If option 4. - 6. (part-time, temporary and/or seasonal exclusions) is selected, when any such excluded Employee actually completes 1 Year of Service, then such Employee will no longer be part of this excluded class. For this purpose, the Hours of Service method will be used for the 1 Year of Service override regardless of any contrary selection at Question 16.

- 13. CONDITIONS OF ELIGIBILITY (Plan Section 3.1)
 - a. **No age and service required.** No age and service required for all Contribution Types (skip to Question 14).
 - b. **Eligibility.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (complete c. and d., select e. and f. if applicable):

Eligibility Requirements

- c. **Age Requirement**
 - 1. No age requirement
 - 2. Age 20 1/2
 - 3. Age 21
 - 4. Age 18 (may not exceed 26)
- d. **Service Requirement**
 - 1. No service requirement
 - 2. _____ (not to exceed 60) months of service (elapsed time)
 - 3. 1 Year of Service
 - 4. _____ (not to exceed 5) Years of Service
 - 5. _____ consecutive month period from the Eligible Employee's employment commencement date and during which at least _____ Hours of Service are completed.
 - 6. _____ consecutive months of employment.
 - 7. Other: _____ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)

NOTE: If c.4. or d.7. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 26 and may not exceed 5 Years of Service.

NOTE: Year of Service means Period of Service if the elapsed time method is chosen.

Waiver of conditions. The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

- e. If employed on _____ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless 3. selected below. Such Employees will enter the Plan as of such date (select 1. and/or 2. AND 3. if applicable):
 - 1. service requirement (may let part-time Eligible Employees into the Plan)

- 2. age requirement
- 3. waiver is for: _____

Amendment or restatement to change eligibility requirements

- f. This amendment or restatement (or a prior amendment and restatement) modified the eligibility requirements and the prior eligibility conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility conditions set forth above.
 - 1. The eligibility conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
 - 2. The eligibility conditions above only apply to individuals who were hired on or after the effective date of the modification.

14. **EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)**

An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of the:

- a. date such requirements are met
- b. first day of the month coinciding with or next following the date on which such requirements are met
- c. first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met
- d. earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met
- e. first day of the Plan Year coinciding with or next following the date on which such requirements are met
- f. first day of the Plan Year in which such requirements are met
- g. first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.
- h. other: first day of the first full bi-weekly payroll period following date of employment (must be definitely determinable)

SERVICE

15. **RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.40 and 1.55)**

- a. No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 16).
- b. Service with the designated employers is recognized as follows (select c. – e. and one or more of columns 1. - 3.; chose other options as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option h. under Section B of Appendix A):

| | 1. | 2. | 3. |
|--|--------------------------|-------------------------------------|--------------------------------|
| Other Employer | Eligibility | Vesting | Contribution Allocation |
| c. <input checked="" type="checkbox"/> Employer name: <u>Meridian Healthcare Partners, Inc.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d. <input checked="" type="checkbox"/> Employer name: <u>Cantu Management Group, Inc.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e. <input type="checkbox"/> Employer name: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Limitations

- f. The following provisions or limitations apply with respect to the recognition of prior service: _____
(e.g., credit service with X only on/following 1/1/19)
- g. The following provisions or limitations apply with respect to the recognition of service with other employers: _____
(e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.40 and 1.55 regardless of any selections above.

16. **SERVICE CREDITING METHOD (Plan Sections 1.40 and 1.55)**

NOTE: If any Plan provision is based on a Year of Service, then the provisions set forth in the definition of Year of Service in Plan Section 1.55 will apply, including the following defaults, except as otherwise elected below:

- 1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.

2. Hours of Service (Plan Section 1.24) will be based on actual Hours of Service except that for Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees), the monthly equivalency will be used.
 3. For eligibility purposes, the computation period will be as defined in Plan Section 1.55 (i.e., shift to the Plan Year if the eligibility condition is one (1) Year of Service or less).
 4. For vesting, allocation, and distribution purposes, the computation period will be the Plan Year.
 5. Upon an Employee's rehire, all prior service with the Employer is taken into account for all purposes.
- a. **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:
1. all purposes (skip to Question 17)
 2. the following purposes (select one or more):
 - a. eligibility to participate
 - b. vesting
 - c. allocations, distributions and contributions
- b. **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):
1. **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service
 2. **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
 3. **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
 - a. all purposes
 - b. the following purposes (select one or more):
 1. eligibility to participate
 2. vesting
 3. allocations, distribution and contributions

Such method will apply to:

 - c. all Employees
 - d. Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
 - e. other: _____ (e.g., per-diem Employees only)

Hours of Service will be determined on the basis of:

 - f. days worked (10 hours per day)
 - g. weeks worked (45 hours per week)
 - h. semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
 - i. months worked (190 hours per month)
 - j. bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
 - k. other: _____ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees).
 4. **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least _____ (not to exceed 1,000) Hours of Service for:
 - a. all purposes
 - b. the following purposes (select one or more):
 1. eligibility to participate
 2. vesting
 3. allocations, distributions and contributions
- c. **Alternative for counting all prior service.** Instead of the default which recognizes all prior service for rehired Employees, the Plan will not recognize prior service and rehired Employee are treated as new hires for the following purposes: (select one)
1. all purposes
 2. the following purposes (select one or more):
 - a. eligibility to participate
 - b. vesting
 - c. sharing in allocations or contributions

- d. **Other service crediting provisions:** _____ (must be definitely determinable; e.g., for vesting a Year of Service is based on 1,000 Hours of Service but for eligibility a Year of Service is based on 900 Hours of Service.)

NOTE: Must not list more than 1,000 hours in this Section. This servicing credit provision will be used for:

1. All purposes
2. The following purposes (select one or more):
 - a. eligibility to participate
 - b. vesting
 - c. allocations, distributions and contributions

VESTING

17. VESTING OF PARTICIPANT'S INTEREST – EMPLOYER CONTRIBUTIONS (Plan Section 6.4(b))

- a. N/A (no Employer contributions; skip to Question 19)
- b. The vesting provisions selected below apply. Section B of Appendix A can be used to specify any exceptions to the provisions below.

NOTE: The Plan provides that contributions for converted sick leave and/or vacation leave are fully Vested.

Vesting for Employer contributions other than matching contributions

- c. N/A (no Employer contributions (other than matching contributions); skip to f.)
- d. 100% vesting. Participants are 100% Vested in Employer contributions (other than matching contributions) upon entering Plan.
- e. The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer contributions (other than matching contributions):
 1. 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 2. 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 3. 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 4. Cliff: 100% vesting after _____ (not to exceed 15) years
 5. Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

| Years (or Periods) of Service | Percentage |
|-------------------------------|------------|
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |

Vesting for Employer matching contributions

- f. N/A (no Employer matching contributions)
- g. The schedule above will also apply to Employer matching contributions.
- h. 100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan.
- i. The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
 1. 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 2. 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 3. 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 4. Cliff: 100% vesting after _____ (not to exceed 15) years
 5. Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

| Years (or Periods) of Service | Percentage |
|-------------------------------|------------|
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |

NOTE: If any Part-time/Seasonal/Temporary Employees who are not covered under Social Security are participating in this Plan as a Social Security Replacement Plan, any contributions used to satisfy the minimum contribution requirements of Question 24.e. will be 100% vested.

18. VESTING OPTIONS

Excluded vesting service. The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

- a. Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
- b. Service prior to the computation period in which an Employee has attained age _____.
- c. Service during a period for which an Employee did not make mandatory Employee contributions.

Vesting for death, Total And Permanent Disability and Early/Normal Retirement. Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

- d. Death
- e. Total and Permanent Disability
- f. Early Retirement Date
- g. Normal Retirement Age

RETIREMENT AGES

19. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.33) means:

This Question 19 and Question 20 may be skipped if the Plan does not base any benefits, distributions or other features on Normal Retirement Age.

- a. **Specific age.** The date a Participant attains age 65
- b. **Age/participation.** The later of the date a Participant attains age _____ or the _____ anniversary of the first day of the Plan Year in which participation in the Plan commenced
- c. Other: _____ (must be definitely determinable)

NOTE: If this is a Money Purchase Pension Plan and in-service distributions at Normal Retirement Age are permitted, then the Normal Retirement Age cannot be less than age 62, or age 50 if substantially all Participants are qualified public safety employees (as defined in Code §72(t)(1)). The "substantially all" requirement for qualified public safety employees will no longer be a requirement as of the effective date of the final regulations once they are issued & effective. If an age less than 62 is inserted (unless the age 50 safe harbor is applicable for a qualified public safety employee), no reliance will be afforded on the Opinion Letter issued to the Plan that such age is reasonably representative of the typical retirement age for the industry in which the Participants works. Effective for Employees hired during Plan Years beginning on or after the later of (1) January 1, 2015, or (2) the close of the first legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three (3) months after the final regulations are published in the Federal Register, an NRA of less than age 62 must comply with the final regulations under §401(a).

Qualified public safety employees. Normal Retirement Age for public safety employees (as defined in Code §72(t)(1)) (leave blank if not applicable)

- d. Age _____ (may not be less than 50 for a Money Purchase Pension Plan or 40 for a Profit Sharing Plan)

20. NORMAL RETIREMENT DATE (Plan Section 1.34) means, with respect to any Participant, the:

- a. date on which the Participant attains "NRA"
- b. first day of the month coinciding with or next following the Participant's "NRA"
- c. first day of the month nearest the Participant's "NRA"
- d. Anniversary Date coinciding with or next following the Participant's "NRA"
- e. Anniversary Date nearest the Participant's "NRA"
- f. Other: _____ (e.g., first day of the month following the Participant's "NRA").

21. EARLY RETIREMENT DATE (Plan Section 1.15)
- a. N/A (no early retirement provision provided)
 - b. Early Retirement Date means the:
 - 1. date on which a Participant satisfies the early retirement requirements
 - 2. first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
 - 3. Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements
- Early retirement requirements**
- 4. Participant attains age _____
AND, completes.... (leave blank if not applicable)
 - a. at least _____ Years (or Periods) of Service for vesting purposes
 - b. at least _____ Years (or Periods) of Service for eligibility purposes
- c. Early Retirement Date means: _____ (must be definitely determinable)

COMPENSATION

22. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.10 and 1.23).

Base definition

- a. Wages, tips and other compensation on Form W-2
- b. Code §3401(a) wages (wages for withholding purposes)
- c. 415 safe harbor compensation

NOTE: Plan Section 1.10(c) provides that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457.

Determination period. Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option f. under Section B of Appendix A):

- d. the Plan Year
- e. the Fiscal Year coinciding with or ending within the Plan Year
- f. the calendar year coinciding with or ending within the Plan Year

Adjustments to Compensation (for Plan Section 1.10). Compensation will be adjusted by:

- g. **No adjustments** (skip to Question 23. below)
- h. **Adjustments.** Compensation will be adjusted by (select all that apply):
 - 1. excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457)
 - 2. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.
 - 3. excluding Compensation paid during the "determination period" while not a Participant in the Plan.
 - 4. excluding Military Differential Pay
 - 5. excluding overtime
 - 6. excluding bonuses
 - 7. other: _____ (e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

23. POST-SEVERANCE COMPENSATION (415 REGULATIONS)

415 Compensation (post-severance compensation adjustments) (select all that apply at a.; leave blank if none apply)

NOTE: Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.23), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

- a. The defaults listed above apply except for the following (select one or more):
 - 1. Leave cash-outs will be **excluded**
 - 2. Nonqualified unfunded deferred compensation will be **excluded**
 - 3. Disability continuation payments will be **included** for all Participants and the salary continuation will continue for the following fixed or determinable period: _____
 - 4. Other: _____ (must be definitely determinable)

Plan Compensation (post-severance compensation adjustments)

- b. **Defaults apply.** Compensation will **include** (to the extent provided in Plan Section 1.10 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans. (skip to Question 24)
- c. **Exclude all post-severance compensation.** Exclude all post-severance compensation for allocation purposes.
- d. **Post-severance adjustments.** The defaults listed at b. apply except for the following (select one or more):
 - 1. Exclude all post-severance compensation

- 2. Regular pay will be **excluded**
- 3. Leave cash-outs will be **excluded**
- 4. Nonqualified unfunded deferred compensation will be **excluded**
- 5. Military Differential Pay will be **included**
- 6. Disability continuation payments will be **included** for all Participants and the salary continuation will continue for the following fixed or determinable period: _____
- e. Other: _____ (must be definitely determinable)

CONTRIBUTIONS AND ALLOCATIONS

24. EMPLOYER CONTRIBUTIONS (OTHER THAN MATCHING CONTRIBUTIONS) (Plan Section 4.1(b)(3)) (skip to Question 26 if Employer contributions are NOT selected at Question 11.b.)

CONTRIBUTION FORMULA (select one or more of the following contribution formulas:)

- a. **Discretionary contribution (no groups).** (may not be elected if this Plan is a Money Purchase Pension Plan) The Employer may make a discretionary contribution, to be determined by the Employer. Any such contribution will be allocated to each Participant eligible to share in allocations in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.
- b. **Discretionary contribution (Grouping method).** (may not be elected if this Plan is a Money Purchase Pension Plan) The Employer may designate a discretionary contribution to be made on behalf of each Participant group selected below (only select 1. or 2.). The groups must be clearly defined in a manner that will not violate the definite predetermined allocation formula requirement of Regulation §1.401-1(b)(1)(ii). The Employer must notify the Trustee in writing of the amount of the Employer Contribution being given to each group.
 - 1. Each Participant constitutes a separate classification.
 - 2. Participants will be divided into the following classifications with the allocation methods indicated under each classification.

Definition of classifications. Define each classification and specify the method of allocating the contribution among members of each classification. Classifications specified below must be clearly defined in a manner that will not violate the definitely determinable allocation requirement of Regulation §1.401-1(b)(1)(ii).

Classification A will consist of _____

The allocation method will be: pro rata based on Compensation
 equal dollar amounts (per capita)

Classification B will consist of _____

The allocation method will be: pro rata based on Compensation
 equal dollar amounts (per capita)

Classification C will consist of _____

The allocation method will be: pro rata based on Compensation
 equal dollar amounts (per capita)

Classification D will consist of _____

The allocation method will be: pro rata based on Compensation
 equal dollar amounts (per capita)

Additional Classifications: _____ (specify the classifications and which of the above allocation methods (pro rata or per capita) will be used for each classification).

NOTE: If more than four (4) classifications, the additional classifications and allocation methods may be attached as an addendum to the Adoption Agreement or may be entered under Additional Classifications above.

Determination of applicable group. If a Participant shifts from one classification to another during a Plan Year, then unless selected below, the Participant is in a classification based on the Participant's status as of the last day of the Plan Year, or if earlier, the date of termination of employment. If selected below, the Administrator will apportion the Participant's allocation during a Plan Year based on the following:

- a. Beginning of Plan Year. The classification will be based on the Participant's status as of the beginning of the Plan Year.
 - b. Months in each classification. Pro rata based on the number of months the Participant spent in each classification.
 - c. Days in each classification. Pro rata based on the number of days the Participant spent in each classification.
 - d. One classification only. The Employer will direct the Administrator to place the Participant in only one classification for the entire Plan Year during which the shift occurs.
- c. **Fixed contribution** equal to (only select one):
 - 1. _____% of each Participant's Compensation for each:
 - a. Plan Year
 - b. calendar quarter
 - c. month

- d. pay period
 - e. week
 - 2. \$ _____ per Participant.
 - 3. \$ _____ per Hour of Service worked while an Eligible Employee
 - a. up to _____ hours (leave blank if no limit)
 - 4. other: _____ (the formula described must satisfy the definitely determinable requirement under Regulation §1.401-1(b)) **NOTE:** Under Question 24.c.4., the Employer may only describe the allocation of Nonelective Contributions from the elections available under Question 24.c of this Adoption Agreement and/or a combination thereof as to a Participant group (e.g., a monthly contribution applies to Group A).
- d. **Sick leave/vacation leave conversion.** The Employer will contribute an amount equal to an Employee's current hourly rate of pay multiplied by the Participant's number of unused accumulated sick leave and/or vacation days (as selected below). Only unpaid sick and vacation leave for which the Employee has no right to receive in cash may be included. In no event will the Employer's contribution for the Plan Year exceed the maximum contribution permitted under Code §415(c).

The following may be converted under the Plan: (select one or both):

- 1. Sick leave
- 2. Vacation leave

Eligible Employees. Only the following Participants shall receive the Employer contribution for sick leave and/or vacation leave (select 3. and/or 4; leave blank if no limitations provided, however, that this Plan may not be used to only provide benefits for terminated Employees)

- 3. **Former Employees.** All Employees terminating service with the Employer during the Plan Year and who have satisfied the eligibility requirements based on the terms of the Employer's accumulated benefits plans checked below (select all that apply; leave blank if no exclusions):
 - a. The Former Employee must be at least age _____ (e.g., 55)
 - b. The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. A contribution will not be made for hours in excess of _____ (e.g., 40) hours
 - 4. **Active Employees.** Active Employees who have not terminated service during the Plan Year and who meet the following requirements (select all that apply; leave blank if no exclusions):
 - a. The Employee must be at least age _____ (e.g., 55)
 - b. The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. A contribution will not be made for hours in excess of _____ (e.g., 40) hours
- e. **Social Security Replacement Plan.** Except as provided below, the Employer will contribute an amount equal to 7.5% of each eligible Participant's Compensation for the entire Plan Year, reduced by mandatory Employee contributions that are picked-up under Code §414(h) and Employer contributions to this Plan actually contributed to the Participant's Account during such Plan Year. (may only be selected if Question 11.b.1. has also been selected)

AND, only the following Employees will NOT be eligible for the Social Security Replacement Plan contribution: (select all that apply)

- 1. Part-time Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2. A part-time Employee is an Employee whose regularly scheduled service is less than _____ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.55).
- 2. Seasonal Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2. A seasonal Employee is an Employee who is categorized as a seasonal Employee on the Employer's payroll records.
- 3. Temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2. A temporary Employee is an Employee who is categorized as a temporary Employee on the Employer's payroll records.
- 4. Employees in elective positions (filled by an election, which may be by legislative body, board or committee, or by a jurisdiction's qualified electorate)
- 5. Other: _____ (any other group of Employees that is definitely determinable and not eligible for the Social Security Replacement Plan contribution).

The minimum contribution of 7.5% stated above will be satisfied by:

- a. the Employee only (specify the contribution at the mandatory Employee contributions Question 30)
- b. the Employer only
- c. both the Employee and the Employer. The Employee shall contribute the amount specified in Question 30 for mandatory Employee contributions) and the Employer shall contribute _____% of each eligible Participant's Compensation.

NOTE: If a. or c. above is selected, then the mandatory Employee contribution must be picked-up by the Employer at Question 30. Also, if b. or c. above is selected, then the allocation conditions in Question 25

below do not apply to the Employer contribution made pursuant to this provision.

- f. Other: _____ (the formula described must satisfy the definitely determinable requirement under Regulation §1.401-1(b) and if this is a Money Purchase Pension, it must not be a discretionary contribution formula). **NOTE:** Under Question 24.f., the Employer may only describe the allocation of Nonelective Contributions from the elections available under Question 24 and/or a combination thereof as to a Participant group or contribution type (e.g., pro rata allocation applies to Group A; contributions to other Employees will be allocated in accordance with the classifications allocation provisions of Plan Section 4.3 with each Participant constituting a separate classification).

25. ALLOCATION CONDITIONS (Plan Section 4.3). If 24.a., b., c., or f. is selected above, indicate requirements to share in allocations of Employer contributions (select a. OR b. and all that apply at c. - e.)

- a. **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 26).

- b. **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)

Conditions for Participants NOT employed on the last day of the Plan Year

1. A Participant must complete at least _____ (not to exceed 500) Hours of Service if the actual hours/equivalency method is selected (or at least _____ (not to exceed 3) months of service if the elapsed time method is selected).
2. A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
3. Participants will NOT share in the allocations, regardless of service.
4. Participants will share in the allocations, regardless of service.
5. Other: _____ (must be definitely determinable and not subject to Employer discretion)

Conditions for Participants employed on the last day of the Plan Year

6. No service requirement.
7. A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8. A Participant must complete at least _____ Hours of Service during the Plan Year.
9. Other: _____ (must be definitely determinable and not subject to Employer discretion)

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. above is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- c. Death
- d. Total and Permanent Disability
- e. Termination of employment on or after Normal Retirement Age
 1. or Early Retirement Date

26. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 4.1(b)(2) and Plan Section 4.12). (skip to Question 29 if matching contributions are NOT selected at Question 11.c.) The Employer will (or may with respect to any discretionary contribution) make the following matching contributions:

- A. **Employee contributions taken into account.** For purposes of applying the matching contribution provisions below, the following amounts are being matched (hereafter referred to as "matched Employee contributions" (select one or more):

- a. Elective deferrals to a **457 plan**. Enter Plan name(s): County of Kern California Deferred Compensation Plan
- b. Elective deferrals to a **403(b) plan**. Enter Plan name(s): _____
- c. Voluntary Employee Contributions
- d. Other: _____ (specify amounts that are matched under this Plan and are provided for within this Adoption Agreement)

- B. **Matching Formula.** (select one)

- e. **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to _____% (e.g., 50) of the Participant's "matched Employee contributions"
 1. that do not exceed _____% of a Participant's Compensation (leave blank if no limit) Additional matching contribution (choose 2. if applicable):
 2. plus an additional matching contribution of a discretionary percentage determined by the Employer,
 - a. but not to exceed _____% of Compensation. Such contribution is subject to the Instructions and Notice requirement of Section 4.12.

- f. **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's "matched Employee contributions", determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

| Tiers of Contributions (indicate \$ or %) | Matching Percentage |
|--|---------------------|
| First <u>6%</u> | <u>100</u> % |
| Next <u>6%</u> | <u>50</u> % |
| Next _____ | _____ % |
| Next _____ | _____ % |

- g. **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's "matched Employee contributions" based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

| Years (or Periods) of Service | Matching Percentage |
|-------------------------------|---------------------|
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1. vesting purposes
2. eligibility purposes

- h. **Flexible Discretionary Match.** (may not be elected if this Plan is a Money Purchase Pension Plan) "Flexible Discretionary Match" means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. Except as specified below, the Employer retains discretion over the formula or formulas for allocating the Flexible Discretionary Match, including the Discretionary Matching Contribution rate or amount, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants or categories of Participants who will receive the allocation, and the time period applicable to any matching formula(s) (collectively, the "Flexible Discretionary Matching Formula"), except as the Employer otherwise elects in its Adoption Agreement. Such contributions will be subject to the Instructions and Notice requirement of Section 4.12, reproduced below, unless the Employer elects to use a "Rigid Discretionary Match" in Election 26.B.h.1. below.

The discretionary matching contribution under this Question 26.B.h. is a "Flexible Discretionary Match" unless the Employer elects to use a "Rigid Discretionary Match." (Choose 1. if applicable.)

1. **Rigid Discretionary Match.** A "Rigid Discretionary Match" means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. Such discretion will only pertain to the amount of the annual contribution. The Employer must select the allocation method for this Contribution by selecting among those Adoption Agreement options which confer no Employer Discretion regarding the allocation of such discretionary amount, for example, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants who will receive the allocation, and the time period applicable to any matching formula(s). This "Rigid Discretionary Match" is not subject to the Instructions and Notice requirement of Section 4.12.

Section 4.12 provides: INSTRUCTIONS TO ADMINISTRATOR AND NOTIFICATION TO PARTICIPANTS. For Plan Years beginning after the end of the Plan Year in which this document is first adopted, if a "Flexible Discretionary Match" contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to *allocate* a matching contribution to Participants) and the Employer makes a "Flexible Discretionary Match" to the Plan, the Employer must provide the Plan Administrator or Trustee written instructions describing (1) how the "Flexible Discretionary Match" formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the "Flexible Discretionary Match" formula applies, and (3) if applicable, a description of each business location or business classification subject to separate "Flexible Discretionary Match" allocation formulas. Such instructions must be provided no later than the date on which the "Flexible Discretionary Match" is made to the Plan. A summary of these instructions must be communicated to Participants who receive an allocation of the "Flexible Discretionary Match" no later than 60 days following the date on which the last "Flexible Discretionary Match" contribution is made to the Plan for the Plan Year.

- i. **Discretionary - tiered.** (may not be elected if this Plan is a Money Purchase Pension Plan) The Employer may make matching contributions equal to a discretionary percentage of a Participant's "matched Employee contributions," to be determined by the Employer, of each tier, to be determined by the Employer. Such discretion will only pertain to the

amount of the contribution. The tiers may be based on the rate of a Participant's "matched Employee contributions" or Years of Service. Such contribution is subject to the Instructions and Notice requirement of Section 4.12.

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

| Tiers of Contributions (indicate \$ or %) | Matching Percentage |
|--|---------------------|
| First _____ | _____ % |
| Next _____ | _____ % |
| Next _____ | _____ % |
| Next _____ | _____ % |

- j. Other: _____ (the formula described must satisfy the definitely determinable requirement under Regulation §1.401-1(b) and if this is a Money Purchase Pension Plan, it must not be a discretionary contribution formula. **NOTE:** Under Question 26.B.j., the Employer may only describe the allocation of Matching Contributions from the elections available under Question 26 and/or a combination thereof as to a Participant group or contribution type (e.g., fixed – uniform rate applies to Group A; contributions to other Employees will be allocated as a tiered contribution.)

27. MATCHING CONTRIBUTION PROVISIONS

- A. **Maximum matching contribution.** The total matching contribution made on behalf of any Participant for any Plan Year will not exceed:

- a. N/A (no Plan specific limit on the amount of matching contribution)
 b. \$_____
 c. 9 % of Compensation.

- B. **Period of determination.** Any matching contribution other than a "Flexible Discretionary Match" will be applied on the following basis (and "matched Employee contributions" and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period. Skip if the only Matching Contribution is a Flexible Discretionary Match.):

- d. the Plan Year (potential annual true-up required)
 e. each payroll period (no true-up)
 f. each month (potential monthly true-up required)
 g. each Plan Year quarter (potential quarterly true-up required)
 h. each payroll unit (e.g., hour) (no true-up)
 i. Other (specify): _____ The time period described must be definitely determinable under Treas. Reg. §1.401-1(b). This line may be used to apply different options to different matching contributions (e.g., Discretionary matching contributions will be allocated on a Plan Year period while fixed matching contributions will be allocated on each payroll period.) Such contribution period is subject to the Instructions and Notice requirement of Section 4.12.

28. ALLOCATION CONDITIONS (Plan Section 4.3) Select a. OR b. and all that apply of c. - h.

- a. **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 29).
 b. **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)
Conditions for Participants NOT employed on the last day of the Plan Year.
 1. A Participant must complete more than _____ Hours of Service (or _____ months of service if the elapsed time method is selected).
 2. A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. Participants will NOT share in the allocations, regardless of service.
 4. Participants will share in the allocations, regardless of service.
 5. Other: _____ (must be definitely determinable)

Conditions for Participants employed on the last day of the Plan Year

6. No service requirement.
 7. A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. A Participant must complete at least _____ Hours of Service during the Plan Year.
 9. Other: _____ (must be definitely determinable and not subject to Employer discretion)

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- c. Death
 d. Total and Permanent Disability
 e. Termination of employment on or after Normal Retirement Age
 1. or Early Retirement Date

Conditions based on period other than Plan Year. The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at b.8. above).

- f. The Plan Year quarter.
- g. Payroll period.
- h. Other: _____ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve month period).

29. FORFEITURES (Plan Sections 1.21 and 4.3(e))

Timing of Forfeitures. Except as provided in Plan Section 1.21, a Forfeiture will occur:

- a. N/A (may only be selected if all contributions are fully Vested (default provisions at Plan Section 4.3(e) apply))
- b. As of the earlier of (1) the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service, or (2) the distribution of the entire Vested portion of the Participant's Account.
- c. As of the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service.
- d. As soon as reasonably practical after the date the Participant severs employment.

Use of Forfeitures. (skip if this is NOT a Money Purchase Pension Plan; for Profit Sharing Plans, Forfeitures are disposed of in accordance with Employer direction that is consistent with Section 4.3(e)).

Forfeitures will be (select one):

- e. added to the Employer contribution and allocated in the same manner
- f. used to reduce any Employer contribution
- g. allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- h. other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and that is not subject to Employer discretion)

30. MANDATORY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if mandatory Employee contributions NOT selected at Question 11.d.)

Type of mandatory Employee Contribution. The mandatory Employee contribution is being made in accordance with the following: (select one)

- a. The mandatory Employee contribution is a condition of employment.
- b. The Employee must make, on or before first being eligible to participate under any Plan of the Employer, an irrevocable election to contribute the mandatory Employee contribution to the Plan. No Eligible Employee will become a Participant unless the Employee makes such an irrevocable election.

Amount of mandatory Employee Contribution (select one)

- c. An Eligible Employee must contribute to the Plan _____% (not to exceed 25%) of Compensation.
- d. An Eligible Employee must, prior to his or her first Entry Date, make a one-time irrevocable election to contribute to the Plan from _____% (not less than 1%) to _____% (not to exceed 25%) of Compensation.

Conditions of Mandatory Employee Contributions

- e. **Additional provisions and conditions:** _____ (must be definitely determinable; e.g., Only full-time Employees must make mandatory Employee contributions)

Employer pick-up contribution. The mandatory Employee contribution is "picked-up" by the Employer under Code §414(h)(2) unless elected below. (select if applicable)

- f. The mandatory Employee contribution is not "picked-up" by the Employer.

DISTRIBUTIONS

31. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)

Distributions under the Plan may be made in (select all that apply; must select at least one):

- a. lump-sums
- b. substantially equal installments
- c. partial withdrawals, provided the minimum withdrawal is \$_____ (leave blank if no minimum)
- d. partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (leave blank if no exceptions):
 - 1. Only Participants (and not Beneficiaries) may elect partial withdrawals or installments
 - 2. Other: _____ (e.g., partial is not permitted for death benefits. Must be definitely determinable and not subject to Employer discretion.)
- e. annuity: _____ (describe the form of annuity or annuities)

Non-Standardized Governmental 401(a)

f. other: _____ (must be definitely determinable and not subject to Employer discretion)

NOTE: Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

Cash or property. Distributions may be made in:

g. cash only, except for (select all that apply; leave blank if none apply):

1. insurance Contracts
2. annuity Contracts
3. Participant loans
4. all investments in an open brokerage window or similar arrangement

h. cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):

1. _____ (must be definitely determinable and not subject to Employer discretion)

Joint and Survivor Annuity provisions. (Plan Sections 6.5(e) and 6.6(e) (select one) The Joint and Survivor Annuity provisions do not apply to the Plan unless selected below (choose if applicable)

i. **Joint and Survivor Annuity applicable as normal form of distribution.** The Joint and Survivor annuity rules set forth in Plan Sections 6.5(e) and 6.5(f) apply to all Participants (if selected, then annuities are a form of distribution under the Plan even if e. above is not selected)

j. **Joint and Survivor Annuity rules apply based on Participant election.** Plan Section 6.5(f) will apply and the joint and survivor rules of Code §§401(a)(11) and 417 (as set forth in Plan Sections 6.5(e) and 6.6(e) will apply only if an annuity form of distribution is selected by a Participant.

AND, if i. or j. is selected above, the one-year marriage rule does not apply unless selected below (choose if applicable).

1. The one-year marriage rule applies.

Spousal consent requirements. Spousal consent is not required for any Plan provisions (except as otherwise elected in i. above for the joint and survivor annuity rules) unless selected below (choose if applicable)

k. **Required for all distributions.** A Spouse must consent to all distributions (other than required minimum distributions).

l. **Beneficiary designations.** A married Participant's Spouse will be the Beneficiary of the entire death benefit unless the Spouse consents to an alternate Beneficiary.

AND, if k. or l. is selected, the one-year marriage rule does not apply unless selected below (choose if applicable).

1. The one-year marriage rule applies.

32. **CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT.** Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

A. Accounts in excess of \$5,000

- a. Distributions may be made as soon as administratively feasible following severance of employment.
- b. Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- c. Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.
- d. Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.
- e. Distributions may be made as soon as administratively feasible after _____ months have elapsed following severance of employment.
- f. No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- g. Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

B. Accounts of \$5,000 or less

- h. Same as above
- i. Distributions may be made as soon as administratively feasible following severance of employment.
- j. Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- k. Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

- C. **Timing after initial distributable event.** If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 32.f. and 32.h.):

i. Other: _____ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

- D. **Participant consent (i.e., involuntary cash-outs).** Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

NOTE: The Plan provides that distributions of amounts of \$5,000 or less are only paid as lump-sums.

m. No, Participant consent is required for all distributions.

n. Yes, Participant consent is required only if the distribution is over:

1. \$5,000
2. \$1,000
3. \$_____ (less than \$1,000)

NOTE: If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

Automatic IRA rollover. With respect to mandatory distributions of amounts that are \$1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

4. If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least \$_____ (e.g., \$200).

- E. **Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the \$5,000 threshold for timing of distributions, form of distributions, or consent rules.

o. Exclude rollovers (rollover contributions will be **excluded** in determining the \$5,000 threshold)

NOTE: Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

33. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))

Distributions upon the death of a Participant prior to the "required beginning date" will:

- a. be made pursuant to the election of the Participant or "designated Beneficiary"
- b. begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
- c. be made within 5 (or if lesser _____) years of death for all Beneficiaries
- d. be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

NOTE: The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

34. OTHER PERMITTED DISTRIBUTIONS (select all that apply; leave blank if none apply)

A. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)

In-service distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (if applicable, answer a. - e.; leave blank if not applicable):

a. In-service distributions may be made to a Participant who has not separated from service provided the following has been satisfied (select one or more) (options 2. - 5. may only be selected with Profit Sharing Plans):

1. Age. The Participant has reached: (select one)
 - a. Normal Retirement Age
 - b. age 62
 - c. age 59 1/2 (may not be selected if a Money Purchase Pension Plan)
 - d. age _____ (may not be less than age 62 for Money Purchase Pension Plans)
2. the Participant has been a Participant in the Plan for at least _____ years (may not be less than five (5))
3. the amounts being distributed have accumulated in the Plan for at least 2 years
4. other: _____ (must satisfy the definitely determinable requirement under Regulations §401-1(b); may not be subject to Employer discretion; and must be limited to a combination of items a.1. - a.3. or a Participant's disability.)

More than one condition. If more than one condition is selected above, then a Participant only needs to satisfy one of the conditions, unless selected below:

5. A Participant must satisfy each condition

NOTE: Distributions from a Transfer Account attributable to a Money Purchase Pension Plan are not permitted prior to age 62.

Account restrictions. In-service distributions are permitted from the following Participant Accounts:

- b. all Accounts
- c. only from the following Accounts (select one or more):
 - 1. Account attributable to Employer matching contributions
 - 2. Account attributable to Employer contributions other than matching contributions
 - 3. Rollover Account
 - 4. Transfer AccountPermitted from the following assets attributable to (select one or both):
 - a. non-pension assets
 - b. pension assets (e.g., from a Money Purchase Pension Plan)
- 5. Mandatory Employee Contribution Account
- 6. Other: _____ (specify Account(s) and conditions in a manner that satisfies the definitely determinable requirement under Regulation §1.401-1(b) and is not subject to Employer discretion)

Limitations. The following limitations apply to in-service distributions:

- d. N/A (no additional limitations)
- e. Additional limitations (select one or more):
 - 1. The minimum amount of a distribution is \$_____.
 - 2. No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 - 3. Distributions may only be made from Accounts which are fully Vested.
 - 4. In-service distributions may be made subject to the following provisions: _____ (must satisfy the definitely determinable requirement under Regulation §1.401-1(b) and not be subject to Employer discretion).

B. **HARDSHIP DISTRIBUTIONS** (Plan Sections 6.12) (may not be selected if this is a Money Purchase Pension Plan)
Hardship distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (leave blank if not applicable):

- f. Hardship distributions are permitted from the following Participant Accounts:
 - 1. all Accounts
 - 2. only from the following Accounts (select one or more):
 - a. Account attributable to Employer matching contributions
 - b. Account attributable to Employer contributions other than matching contributions
 - c. Rollover Account (if not available at any time under Question 36)
 - d. Transfer Account (other than amounts attributable to a money purchase pension plan)
 - e. Mandatory Employee Contribution Account
 - f. Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

NOTE: Hardship distributions are NOT permitted from a Transfer Account attributable to pension assets (e.g., from a Money Purchase Pension Plan).

Additional limitations. The following limitations apply to hardship distributions:

- 3. N/A (no additional limitations)
- 4. Additional limitations (select one or more):
 - a. The minimum amount of a distribution is \$_____.
 - b. No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 - c. Distributions may only be made from Accounts which are fully Vested.
 - d. A Participant does not include a Former Employee at the time of the hardship distribution.
 - e. Hardship distributions may be made subject to the following provisions: _____ (must satisfy the definitely determinable requirement under Regulation §1.401-1(b) and not be subject to Employer discretion).

Beneficiary Hardship. Hardship distributions for Beneficiary expenses are NOT allowed unless otherwise selected below.

- 5. Hardship distributions for expenses of Beneficiaries are allowed
Special effective date (may be left blank if effective date is same as the Plan or Restatement Effective Date; select a. and, if applicable, b.)
 - a. effective as of _____
 - b. eliminated effective as of _____.

MISCELLANEOUS

35. LOANS TO PARTICIPANTS (Plan Section 7.4)
a. New loans are NOT permitted.
b. New loans are permitted.
NOTE: Regardless of whether new loans are permitted, if the Plan permits rollovers and/or plan-to-plan transfers, then the Administrator may, in a uniform manner, accept rollovers and/or plan-to-plan transfers of loans into this Plan.
36. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 11.f.)
Eligibility. Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):
a. Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant
b. Participants who are Former Employees
Distributions. When may distributions be made from a Participant's Rollover Account?
c. At any time
d. Only when the Participant is otherwise entitled to any distribution under the Plan
37. **HEART ACT** (Plan Section 4.11) (select one or more)
a. **HEART ACT Continued benefit accruals.** Continued benefit accruals will apply
b. **Distributions for deemed severance of employment.** The Plan permits distributions for deemed severance of employment.

Reliance on Provider Opinion Letter. The Provider has obtained from the IRS an Opinion Letter specifying the form of this document satisfies Code §401 as of the date of the Opinion Letter. An adopting Employer may rely on the Provider’s IRS Opinion Letter *only* to the extent provided in Rev. Proc. 2017-41 or subsequent guidance. The Employer may not rely on the Opinion Letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the Opinion Letter and in Rev. Proc. 2017-41 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the IRS.

An Employer who has ever maintained or who later adopts an individual medical account, as defined in Code §415(l)(2)) in addition to this Plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code§415.

This Adoption Agreement may be used only in conjunction with the basic Plan document #03. This Adoption Agreement and the basic Plan document will together be known as FIS Business Systems LLC Non-Standardized Governmental 401(a) Pre-Approved Plan #03-001.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

Execution for Page Substitution Amendment Only. If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Election(s) _____ effective _____, by substitute Adoption Agreement page number(s) _____. The Employer should retain all Adoption Agreement Execution Pages and amended pages. (*Note: The Effective Date may be retroactive or may be prospective.*)

The Provider, Voya Retirement Insurance and Annuity Company will notify the Employer of any amendment to this Pre-approved Plan or of any abandonment or discontinuance by the Provider of its maintenance of this Pre-approved Plan. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and FIS Business Systems LLC no longer has any obligations to the Employer that relate to the adoption of this Plan. For inquiries regarding the adoption of the Pre-approved Plan, the Provider's intended meaning of any Plan provisions or the effect of the Opinion Letter issued to the Provider, please contact the Provider or the Provider’s representative.

Provider Name: Voya Retirement Insurance and Annuity Company

Address: One Orange Way
Windsor Connecticut 06095

Telephone Number: (860) 580-4646

Email address (optional): _____

The Employer, by executing below, hereby adopts this Plan (add additional signature lines as needed). NOTE: If more than one Plan type is adopted, the Plan Provider must provide multiple plan documents for Employer signature.

EMPLOYER: Kern County Hospital Authority

By: signature on file see electronic signature
DATE SIGNED

**APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

A. Special effective dates (leave blank if not applicable):

- a. **Special effective date(s):** _____. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law. (The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance))

B. Other permitted elections (the following elections are optional):

- a. **No other permitted elections**

The following elections apply (select one or more):

- b. **Deemed 125 compensation** (Plan Section 1.23). Deemed 125 compensation will be included in Compensation and 415 Compensation.
- c. **Break-in-Service Rules.** The following Break-in-Service rules apply to the Plan. (select 1. or 2.)
1. **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(e)). The "rule of parity" provisions in Plan Section 3.5(d) will apply for (select one or both):
- a. eligibility purposes
- b. vesting purposes
2. **Break-in-Service rules for rehired Employees.** The following Break-in-Service rules set forth in Plan Sections 3.2 and 3.5 apply: (select one or both)
- a. all Break-in-Service rules set forth in such Sections.
- b. only the following: _____ (specify which provisions apply to the Plan)
- d. **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(f)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(f), the following order of priority will be used: _____ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).
- e. **Joint and Survivor Annuity/Pre-Retirement Survivor Annuity.** If the Plan applies the Joint and Survivor Annuity rules, then the normal form of annuity will be a joint and 50% survivor annuity (i.e., if 31.i. or 31.j. is selected) and the Pre-Retirement Survivor Annuity will be equal to 50% of a Participant's interest in the Plan unless selected below (select 1. and/or 2.)
1. **Normal form of annuity.** Instead of a joint and 50% survivor annuity, the normal form of the qualified Joint and Survivor Annuity will be: (select one)
- a. joint and 100% survivor annuity
- b. joint and 75% survivor annuity
- c. joint and 66 2/3% survivor annuity
2. **Pre-Retirement Survivor Annuity.** The Pre-Retirement Survivor Annuity (minimum Spouse's death benefit) will be equal to 50% of a Participant's interest in the Plan unless a different percentage is selected below: (select one)
- a. 100% of a Participant's interest in the Plan.
- b. _____% (may not be less than 50%) of a Participant's interest in the Plan.
- f. **Limitation Year** (Plan Section 1.30). The Limitation Year for Code §415 purposes will be _____ (must be a consecutive twelve month period) instead of the "determination period" for Compensation.
- g. **415 Limits when 2 defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(1)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:
1. Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": _____
- h. **Recognition of Service with other employers** (Plan Sections 1.40 and 1.55). Service with the following employers (in addition to those specified at Question 15) will be recognized as follows (select one or more):

| | Eligibility | Vesting | Contribution Allocation |
|--|-----------------------------|-----------------------------|--------------------------------|
| 1. <input type="checkbox"/> Employer name: _____ | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/> |
| 2. <input type="checkbox"/> Employer name: _____ | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/> |

3. Employer name: _____ a. b. c.
4. Employer name: _____ a. b. c.
5. Employer name: _____ a. b. c.
6. Employer name: _____ a. b. c.

Limitations

7. The following provisions or limitations apply with respect to the recognition of prior service: _____ a. b. c.
(e.g., credit service with X only on/following 1/1/19)
- i. **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):
1. **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: _____ (must be definitely determinable and satisfy the parameters set forth at Question 17)
 2. **Pre-amendment vesting schedule.** (Plan Section 6.4(b)). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 17 applies to any Participants, then the following provisions apply (must select one of a. – d.):

Applicable Participants. The vesting schedules in Question 17 only apply to:

 - a. Participants who are Employees as of _____ (enter date).
 - b. Participants in the Plan who have an Hour of Service on or after _____ (enter date).
 - c. Participants (even if not an Employee) in the Plan on or after _____ (enter date).
 - d. Other: _____ (e.g., Participants in division A. Must be definitely determinable.)
- j. **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))
- NOTE:** This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.
- The "required beginning date" for a Participant is:
1. April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
 2. April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
 - a. A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of _____ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
 1. N/A (annuity distributions are not permitted)
 2. Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
 3. Upon the recommencement of distributions, a new Annuity Starting Date is created.
 - b. A Participant who had not begun receiving required minimum distributions as of _____ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
 1. The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.
- k. **Other spousal provisions** (select one or more)
1. **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following: _____
 2. **Automatic revocation of spousal designation** (Plan Section 6.2(g)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
 3. **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.
- l. **Applicable law.** Instead of using the applicable laws set forth in Plan Section 9.4(a), the Plan will be governed by the laws of: _____

- m. **Total and Permanent Disability.** Instead of the definition at Plan Section 1.50, Total and Permanent Disability means: _____ (must be definitely determinable).
- n. **Inclusion of Reclassified Employees** (Plan Section 1.17(a)). The Employer does not exclude Reclassified Employees subject to the following provisions: (leave blank if not applicable): _____
- o. **Claims procedures** (Plan Section 2.10). The claims procedures forth in Plan Section 2.10(a) – (b) apply unless otherwise elected below or unless the Administrator has operationally adopted alternative procedures.
1. The claims procedures set forth in Plan Section 2.10(c) – (g) apply instead of Plan Section 2.10(a).
2. The claims procedures set forth in Plan Section 2.10(c)-(g) apply as follows: _____
(specify which provisions apply and/or modified)
- p. **Age 62 In-Service Distributions For Transferred Money Purchase Assets** (Plan Section 6.11)
In-service distributions will be allowed for Participants at age 62. (applies only for Transfer Accounts from a Money Purchase Pension Plan) (skip this question if the Plan is a Money Purchase Pension Plan or if in-service distributions are already permitted for Transferred Accounts at Question 34)
- Limitations.** The following limitations apply to these in-service distributions:
1. The Plan already provides for in-service distributions and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
2. N/A (no limitations)
3. The following elections apply to in-service distributions at age 62 (select one or more):
- a. The minimum amount of a distribution is \$ _____ (may not exceed \$1,000).
- b. No more than _____ distribution(s) may be made to a Participant during a Plan Year.
- c. Distributions may only be made from Accounts which are fully Vested.
- d. In-service distributions may be made subject to the following provisions: _____ (must be definitely determinable and not subject to discretion).
- q. **QLACs.** (Plan Section 6.8(e)(4)) A Participant may elect a QLAC (as defined in Plan Section 6.8(e)(4)) or any alternative form of annuity permitted pursuant to a QLAC in which the Participant's Account has been invested.

ADMINISTRATIVE PROCEDURES

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

A. Loan Limitations. (complete only if loans to Participants are permitted; leave blank if none apply)

- a. Limitations (select one or more):
 - 1. Loans will be treated as Participant directed investments.
 - 2. Loans will only be made for hardship or financial necessity as specified below (select a. or b.)
 - a. hardship reasons specified in Plan Section 6.12
 - b. financial necessity (as defined in the loan program).
 - 3. The minimum loan will be \$_____.
 - 4. A Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
 - 5. All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
 - 6. The home loan term will be _____ years. (if not selected, the Administrator establishes the term for repayment of a home loan)
 - 7. **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
 - a. Account(s) attributable to Employer matching contributions
 - b. Account attributable to Employer contributions other than matching contributions
 - c. Rollover Account
 - d. Transfer Account
 - e. Other: _____
- AND**, if loans are restricted to certain accounts, the limitations of Code §72(p) will be applied:
- f. by determining the limits by only considering the restricted accounts.
 - g. by determining the limits taking into account a Participant's entire interest in the Plan.

Additional Loan Provisions (select all that apply; leave blank if none apply)

- b. **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll (e.g., partner who only has a draw)):
 - 1. payroll deduction
 - 2. ACH (Automated Clearing House)
 - 3. check
 - a. Only for prepayment
- c. **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
 - 1. _____ percentage points over the prime interest rate
 - 2. _____%
 - 3. the Administrator establishes the rate at the time the loan is made
- d. **Refinancing.** Loan refinancing is allowed.

B. Life Insurance. (Plan Section 7.5)

- a. Life insurance may not be purchased.
- b. Life insurance may be purchased...
 - 1. at the option of the Administrator
 - 2. at the option of the Participant

Limitations

- 3. N/A (no limitations)
- 4. The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
 - a. Each initial Contract will have a minimum face amount of \$_____.
 - b. Each additional Contract will have a minimum face amount of \$_____.
 - c. The Participant has completed _____ Years (or Periods) of Service.
 - d. The Participant has completed _____ Years (or Periods) of Service while a Participant in the Plan.
 - e. The Participant is under age _____ on the Contract issue date.
 - f. The maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
 - g. The maximum face amount of any life insurance Contract will be \$_____.

C. Plan Expenses. Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

- a. No
- b. Yes

Use of Forfeitures

Forfeitures of Employer contributions other than matching contributions will be:

- c. added to the Employer contribution and allocated in the same manner
- d. used to reduce any Employer contribution
- e. allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- f. other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion)

Forfeitures of Employer matching contributions will be:

- g. N/A. Same as above or no Employer matching contributions.
- h. used to reduce the Employer matching contribution.
- i. used to reduce any Employer contribution.
- j. other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion)

D. Directed investments

- a. Participant directed investments are NOT permitted.
- b. Participant directed investments are permitted from the following Participant Accounts:
 - 1. all Accounts
 - 2. only from the following Accounts (select one or more):
 - a. Account attributable to Employer contributions
 - b. Rollover Account
 - c. Transfer Account
 - d. Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

E. Rollover Limitations. Will the Plan accept rollover contributions and/or direct rollovers from the sources specified below?

- a. No, Administrator determines in operation which sources will be accepted.
- b. Yes

Rollover sources. Indicate the sources of rollovers that will be accepted (select one or more)

- 1. **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
 - a. a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
 - b. a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
 - c. a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
 - d. a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
 - e. a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
 - f. a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
 - g. a plan described in Code §457(b) (eligible deferred compensation plan)

Direct Rollovers of Participant Loan. The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)

- h. The Plan will accept a direct rollover of a Participant loan
- i. The Plan will only accept a direct rollover of a Participant loan only in the following situation(s): _____ (e.g., only from Participants who were employees of an acquired organization).

- 2. **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):

- a. a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
- b. a plan described in Code §403(a) (an annuity plan)
- c. a plan described in Code §403(b) (a tax-sheltered annuity)
- d. a governmental plan described in Code §457(b) (eligible deferred compensation plan)

- 3. **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

F. Trustee(s) or Insurer(s). Information regarding Trustee(s)/Insurer(s) (required for the Summary Plan Description and, if requested, the Trust Agreement)

(Note: Select a. if not using provided trust. MUST select b and following questions as applicable):

- a. Do not produce the trust agreement
- b. Complete the following UNLESS not selecting supporting forms:

Trustee/Insurer (select a. OR one or more of d. - e.)

c. **Insurer.** This Plan is funded exclusively with Contracts (select one or more of 1. - 4)

Name of Insurer(s)

1. _____
2. _____
3. Use Employer address/telephone number/email
4. Use following address/telephone number/email
 - a. Street: _____
 - b. City: _____
 - c. State: _____
 - d. Zip: _____
 - e. Telephone: _____
 - f. Email: _____

d. Individual Trustee(s)

e. Corporate Trustee

Name of Trust

f. Specify name of Trust (required for FIS trust): _____

Individual Trustees (if d. selected above, complete g. – j.)

Directed/Discretionary Trustees. The individual Trustee(s) executing this Adoption Agreement are (select g. or h.)

g. Select for each individual Trustee (skip to next question)

h. The following selections apply to all individual Trustee(s) (select 1. - 4. as applicable)

1. A discretionary Trustee over all plan assets (may not be selected with 2. - 4.)
2. A nondiscretionary (directed) Trustee over all plan assets (may not be selected with 1., 3. or 4.)
3. The individual Trustee(s) will serve as a discretionary Trustee over the following assets: _____ (may not be selected with 1. or 2.)
4. The individual Trustee(s) will serve as a nondiscretionary (directed) Trustee over the following assets: _____ (may not be selected with 1. or 2.)

Individual Trustee(s) (complete if d. selected above)

i. Individual Trustee(s) are (select one or more of a. - j.; enter address at j. below)

a. **Name** _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be select with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

b. **Name** _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be select with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

c. **Name** _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be select with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

d. Name _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be selected with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

e. Name _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be selected with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

f. Name _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be selected with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

g. Name _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be selected with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

h. Name _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be selected with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

i. Name _____

Title/Email:

1. Title _____
2. Email _____ (optional)

Trustee is: (complete if g. selected above; select 3. – 6. as applicable)

3. Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be selected with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

- j. **Name** _____
Title/Email:
1. Title _____
2. Email _____ (optional)
Trustee is: (complete if g. selected above; select 3. – 6. as applicable)
3. Discretionary Trustee over all plan assets (may not be selected with 4. or 6.)
4. A discretionary Trustee over the following plan assets: _____ (may not be selected with 3. or 5.)
5. Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. A nondiscretionary (directed) Trustee or Custodian over the following plan assets _____ (may not be selected with 3. or 5.)

j. **Individual Trustee Address** (complete if d. selected above)

1. Use Employer address/telephone number/email
2. Use following address/telephone number/email
a. Street: _____
b. City: _____
c. State: _____
d. Zip: _____
e. Telephone: _____
f. Email: _____

Corporate Trustee Name/Type/Address (complete if e. selected above)

k. Name Voya Institutional Trust Company

Address/telephone number/email

1. Use Employer address/telephone number/email
2. Use following address/telephone number/email
a. Street: One Orange Way
b. City: Windsor
c. State: Connecticut
d. Zip: 06095
e. Telephone: (860) 580-2511
f. Email: _____

Directed/Discretionary. The Corporate Trustee is (select 3. - 6. as applicable)

3. A discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
4. A nondiscretionary (directed) Trustee over all plan assets (may not be selected with 3., 5. or 6.)
5. A discretionary Trustee over the following plan assets over the following assets: _____ (may not be selected with 3. – 4.)
6. A nondiscretionary (directed) Trustee over the following plan assets _____ (may not be selected with 3. – 4.)

Signee (optional):

7. Name of person signing on behalf of the corporate Trustee _____
8. Email address of person signing on behalf of the corporate Trustee _____

Special Trustee for collection of contributions. The Employer appoints the following Special Trustee with the responsibility to collect delinquent contributions (*optional*)

l. **Name** _____

Title:

1. _____

Address/telephone number/email

2. Use Employer address/telephone number/email
3. Use following address/telephone number/email
a. Street: _____
b. City: _____
c. State: _____
d. Zip: _____
e. Telephone: _____
f. Email: _____

Custodian(s) Name/Address . The Custodian(s) are (*optional*)

m. **Name(s)** _____

Address/telephone number/email

1. Use Employer address/telephone number/email

2. Use following address/telephone number/email
- a. Street: _____
 - b. City: _____
 - c. State: _____
 - d. Zip: _____
 - e. Telephone: _____
 - f. Email: _____

Investment in common, collective or pooled trust funds. The nondiscretionary Trustee, as directed or the discretionary Trustee acting without direction (and in addition to the discretionary Trustee's authority to invest in its own funds), may invest in any of the following trust funds: *(optional)*

- n. _____ (Specify the names of one or more trust funds in which the Plan can invest)

Choice of law

- o. This trust will be governed by the laws of the state of:
- 1. State in which the Employer's principal office is located
 - 2. State in which the corporate trustee or insurer is located
 - 3. Other _____

FIS BUSINESS SYSTEMS LLC NON-STANDARDIZED GOVERNMENTAL 401(A) MODIFICATIONS

KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT AND
CONFIDENTIAL EMPLOYEES

The enclosed Plan is being submitted for expedited review as a Non-Standardized Plan.

No modifications from the approved specimen plan have been made to this Plan.

**KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT
AND CONFIDENTIAL EMPLOYEES**

SUMMARY OF PLAN PROVISIONS

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KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT AND CONFIDENTIAL EMPLOYEES

SUMMARY OF PLAN PROVISIONS

INTRODUCTION TO YOUR PLAN

What kind of Plan is this?

Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees ("Plan") has been adopted to provide you with the opportunity to save for retirement on a tax-advantaged basis. This Plan is a type of qualified retirement plan. Generally you are not taxed on the amounts we contribute to the Plan until you withdraw these amounts from the Plan.

What information does this Summary provide?

This Summary of Plan Provisions contains information regarding your Plan benefits, your distribution options, and many other features of the Plan. You should take the time to read this summary to get a better understanding of your rights and obligations under the Plan.

If you have any questions about the Plan, please contact the Administrator or other plan representative. The Administrator is responsible for responding to questions and making determinations related to the administration, interpretation, and application of the Plan. The name and address of the Administrator can be found at the end of this summary in the Article entitled "General Information About the Plan."

This summary describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language and is designed to comply with applicable legal requirements. If the non-technical language in this summary conflicts with the language of the Plan document, then the Plan document always governs.

The Plan and your rights under the Plan are subject to various laws, including the Internal Revenue Code. The provisions of the Plan are subject to revision due to a change in laws. Your Employer may also amend or terminate this Plan.

Types of Contributions. The Plan includes provisions for the following types of contributions:

- Employer matching contributions

**ARTICLE I
PARTICIPATION IN THE PLAN**

How do I participate in the Plan?

Provided you are not an Excluded Employee, you may begin participating under the Plan once you have satisfied the eligibility requirements and reached your "Entry Date." The following describes the eligibility requirements and Entry Dates that apply. You should contact the Administrator if you have questions about the timing of your Plan participation.

Excluded Employees. If you are a member of a class of employees identified below, you are an Excluded Employee and you are not entitled to participate in the Plan. The Excluded Employees are:

- excluding anyone that is not classified as Management, Mid-Management and Confidential Employees.

Eligibility Conditions. You will be eligible to participate in the Plan when you have satisfied the following eligibility condition(s). However, you will actually become a Participant in the Plan once you reach the Entry Date as described below.

- attainment of age 18.

Entry Date. Your Entry Date will be first day of the first full bi-weekly payroll period following date of employment.

What happens if I'm a participant, terminate employment and then I'm rehired?

If you are no longer a participant because you terminated employment, and you are rehired, then you will be able to participate in the Plan on your date of rehire provided you are otherwise eligible to participate in the Plan.

**ARTICLE II
EMPLOYER CONTRIBUTIONS**

This Article describes Employer contributions that will be made to the Plan.

What is the Employer matching contribution and how is it allocated?

Matching Contribution. Matching contributions are Employer contributions that are based on contributions you make to County of Kern California Deferred Compensation Plan. All of these contributions that you make are collectively referred to as "salary deferrals" for purposes of the applying the matching contribution described below.

Matching Contribution. Your Employer will make a matching contribution in an amount equal to a percentage of your salary deferrals, the specified matching percentage for the corresponding level of your salary deferrals as shown in the following table.

| Salary Deferral Tier | Matching Percentage |
|----------------------|---------------------|
| First 6% | 100% |
| Next 6% | 50% |

Period of determining matching contribution. The matching contribution above is applied on a payroll period basis. This means that the matching contribution is applied to your salary deferrals for that period.

Limit on matching contribution. Regardless of the preceding, your matching contribution in any Plan Year will not exceed 9% of your compensation.

Allocation conditions. You will always share in the matching contribution regardless of the amount of service you complete during the Plan Year.

What are forfeitures and how are they allocated?

Definition of forfeitures. In order to reward employees who remain employed with the Employer for a long period of time, the law permits a "vesting schedule" to be applied to certain contributions that your Employer makes to the Plan. This means that you will not be "vested" in (entitled to) all of the contributions until you have been employed with the Employer for a specified period of time (see the Article entitled "Vesting"). If a participant terminates employment before being fully vested, then the non-vested portion of the terminated participant's account balance remains in the Plan and is called a forfeiture.

Allocation of forfeitures. The Employer may use forfeitures to pay Plan expenses or to reduce amounts otherwise required to be contributed to the Plan. In some cases, remaining forfeitures will be used to reduce Employer contributions.

**ARTICLE III
COMPENSATION AND ACCOUNT BALANCE**

What compensation is used to determine my Plan benefits?

Definition of compensation. For the purposes of the Plan, compensation has a special meaning. Compensation is generally defined as your total compensation that is subject to income tax and paid to you by your Employer during the calendar year ending within the Plan Year.

Adjustments to compensation. The following adjustments to compensation will be made:

- reimbursements or other expense allowances, fringe benefits, moving expenses, deferred compensation, and welfare benefits will be excluded.
- compensation paid while not a participant in the Plan will be excluded.
- overtime will be excluded.
- bonuses will be excluded.
- compensation paid after you terminate employment will be excluded.

Is there a limit on the amount of compensation which can be considered?

The Plan, by law, cannot recognize annual compensation in excess of a certain dollar limit. The limit for the Plan Year beginning in 2023 is \$330,000. After 2023, the dollar limit may increase for cost-of-living adjustments.

Is there a limit on how much can be contributed to my account each year?

Generally, the law imposes a maximum limit on the amount of contributions that may be made to your account and any other amounts allocated to any of your accounts during the Plan Year, excluding earnings. Beginning in 2023, this total cannot exceed the lesser of \$66,000 or 100% of your annual compensation. After 2023, the dollar limit may increase for cost-of-living adjustments.

How is the money in the Plan invested?

The Trustee of the Plan has been designated to hold the assets of the Plan for the benefit of Plan participants and their beneficiaries in accordance with the terms of this Plan. The trust fund established by the Plan's Trustee will be the funding medium used for the accumulation of assets from which Plan benefits will be distributed.

Participant directed investments. You will be able to direct the investment of your entire interest in the Plan. The Administrator will provide you with information on the investment choices available to you, the procedures for making investment elections, the frequency with which you can change your investment choices and other important information. You need to follow the procedures for making investment elections and you should carefully review the information provided to you before you give investment directions. If you do not direct the investment of your applicable Plan accounts, then your accounts will be invested in accordance with the default investment alternatives established under the Plan.

Earnings or losses. When you direct investments, your accounts are segregated for purposes of determining the earnings or losses on these investments. Your account does not share in the investment performance of other participants who have directed their own investments. You should remember that the amount of your benefits under the Plan will depend in part upon your choice of investments. Gains as well as losses can occur and your Employer, the Administrator, and the Trustee will not provide investment advice or guarantee the performance of any investment you choose.

Will Plan expenses be deducted from my account balance?

Expenses allocated to all accounts. The Plan permits the payment of Plan expenses to be made from the Plan's assets. The method of allocating the expenses depends on the nature of the expense itself. For example, certain administrative (or recordkeeping) expenses would typically be allocated proportionately to each participant. If the Plan pays \$1,000 in expenses and there are 100 participants, your account balance would be charged \$10 (\$1,000/100) of the expense.

Terminated employee. After you terminate employment, your Employer reserves the right to charge your account for your pro rata share of the Plan's administration expenses, regardless of whether your Employer pays some of these expenses on behalf of current employees.

Expenses allocated to individual accounts. There are certain other expenses that may be paid just from your account. These are expenses that are specifically incurred by, or attributable to, you. For example, if you are married and get divorced, the Plan may incur additional expenses if a court mandates that a portion of your account be paid to your ex-spouse. These additional expenses may be paid directly from your account (and not the accounts of other participants) because they are directly attributable to you under the Plan. The Administrator can inform you when there will be a charge (or charges) directly to your account.

Your Employer may, from time to time, change the manner in which expenses are allocated.

ARTICLE IV VESTING

What is my vested interest in my account?

In order to reward employees who remain employed with the Employer for a long period of time, the law permits a "vesting schedule" to be applied to certain contributions that your Employer makes to the Plan. This means that you will not be entitled ("vested") in all of the contributions until you have been employed with the Employer for a specified period of time.

Vesting schedules. Your "vested percentage" for certain Employer contributions is based on vesting Years of Service. This means at the time you stop working, your account balance attributable to contributions subject to a vesting schedule is multiplied by your vested percentage. The result, when added to the amounts that are always 100% vested as shown above, is your vested interest in the Plan, which is what you will actually receive from the Plan.

Matching Contributions

Your "vested percentage" in your account attributable to matching contributions is determined under the following schedule. You will always, however, be 100% vested in your matching contributions if you are employed on or after your Normal Retirement Age or if you die or become disabled.

| Years of Service | Vesting Schedule Matching Contributions | |
|------------------|--|------------|
| | | Percentage |
| 1 | | 20% |
| 2 | | 40% |
| 3 | | 60% |
| 4 | | 80% |
| 5 | | 100% |

How is my service determined for vesting purposes?

Year of Service. To earn a Year of Service, you must be credited with at least 1,000 Hours of Service during a Plan Year. The Plan contains specific rules for crediting Hours of Service for vesting purposes. The Administrator will track your service and will credit you with a Year of Service for each Plan Year in which you are credited with the required Hours of Service, in accordance with the terms of the Plan. If you have any questions regarding your vesting service, you should contact the Administrator.

Hour of Service. You will be credited with your actual Hours of Service for:

- (a) each hour for which you are directly or indirectly compensated by the Employer for the performance of duties during the Plan Year;
- (b) each hour for which you are directly or indirectly compensated by the Employer for reasons other than the performance of duties (such as vacation, holidays, sickness, disability, lay-off, military duty, jury duty or leave of absence during the Plan Year); and
- (c) each hour for back pay awarded or agreed to by the Employer.

You will not be credited for the same Hours of Service both under (a) or (b), as the case may be, and under (c). For Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees) the monthly equivalency method (190 hours per month) will be used.

What service is counted for vesting purposes?

Service with the Employer. In calculating your vested percentage, all service you perform for the Employer will generally be counted.

Service with another Employer. For vesting purposes, your Years of Service with Meridian Healthcare Partners, Inc. and Cantu Management Group, Inc. will be counted.

Military Service. If you are a veteran and are reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, your qualified military service may be considered service with the Employer. If you may be affected by this law, ask the Administrator for further details.

When will the non-vested portion of my account balance be forfeited?

If you are partially vested in your account balance when you leave, the non-vested portion of your account balance will be forfeited on the earlier of the date:

- (a) of the distribution of your vested account balance, or
- (b) when you incur five consecutive 1-year Breaks in Service.

**ARTICLE V
BENEFITS AND DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT**

When can I get money out of the Plan?

You may receive a distribution of the vested portion of some or all of your accounts in the Plan for the following reasons:

- termination of employment for reasons other than death, disability or retirement
- normal retirement
- disability
- death

This Plan is designed to provide you with retirement benefits. However, distributions are permitted if you die or become disabled. In addition, certain payments are permitted when you terminate employment for any other reason. The rules under which you can receive a distribution are described in this Article. The rules regarding the payment of death benefits to your beneficiary are described in "Benefits and Distributions Upon Death."

Military Service. If you are a veteran and are reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, your qualified military service may be considered service with the Employer. There may also be benefits for employees who die or become disabled while on active duty. Employees who receive wage continuation payments while in the military may benefit from various changes in the law. If you think you may be affected by these rules, ask the Administrator for further details.

Distributions for deemed severance of employment. If you are on active duty for more than 30 days, then the Plan generally treats you as having severed employment for distribution purposes. This means that you may request a distribution from the Plan.

What happens if I terminate employment before death, disability or retirement?

If your employment terminates for reasons other than death, disability or normal retirement, you will be entitled to receive only the "vested percentage" of your account balance.

You may elect to have your vested account balance distributed to you as soon as administratively feasible following your termination of employment. However, if the value of your vested account balance does not exceed \$5,000, then a distribution will be made to you regardless of whether you consent to receive it. (See the question entitled "How will my benefits be paid to me?" for additional information.)

What happens if I terminate employment at Normal Retirement Date?

Normal Retirement Date. You will attain your Normal Retirement Age when you reach age 65. Your Normal Retirement Date is the date on which you attain your Normal Retirement Age.

Payment of benefits. You will become 100% vested in all of your accounts under the Plan if you retire on or after your Normal Retirement Age. However, the actual payment of benefits generally will not begin until you have terminated employment and reached your Normal Retirement Date. In such event, a distribution will be made, at your election, as soon as administratively feasible. If you remain employed past your Normal Retirement Date, you may generally defer the receipt of benefits until you actually terminate employment. (See the question entitled "How will my benefits be paid to me?" for an explanation of how these benefits will be paid.)

What happens if I terminate employment due to disability?

Definition of disability. Under the Plan, disability is defined as a physical or mental condition resulting from bodily injury, disease, or mental disorder which renders you incapable of continuing any gainful occupation and which has lasted or can be expected to last for a continuous period of at least twelve (12) months. Your disability must be determined by a licensed physician. However, if your condition constitutes total disability under the federal Social Security Act, then the Administrator may deem that you are disabled for purposes of the Plan.

Payment of benefits. If you become disabled while an employee, you will become 100% vested in all of your accounts under the Plan. Payment of your disability benefits will be made to you as if you had retired. However, if the value of your account balance does not exceed \$5,000, then a distribution of your account balance will be made to you, regardless of whether you consent to receive it. (See the question entitled "How will my benefits be paid to me?" for an explanation of how these benefits will be paid.)

How will my benefits be paid to me?

Forms of distribution. If your vested account balance does not exceed \$5,000, then your vested account balance may only be distributed to you in a single lump-sum payment.

In addition, if your vested account balance exceeds \$5,000, you must consent to any distribution before it may be made. If your vested account balance exceeds \$5,000, you may elect to receive a distribution of your vested account balance in:

- a single lump-sum payment
- installments over a period of not more than your assumed life expectancy (or the assumed life expectancies of you and your beneficiary)
- partial withdrawals

Delaying distributions. You may delay the distribution of your vested account balance unless a distribution is required to be made, as explained earlier, because your vested account balance does not exceed \$5,000. However, if you elect to delay the distribution of your vested account balance, there are rules that require that certain minimum distributions be made from the Plan. Distributions are required to

begin not later than the April 1st following the later of the end of the year in which you reach age 70 1/2 (if you were born before July 1, 1949) or age 72 (if you were born after June 30, 1949) or retire.

Medium of payment. Benefits under the Plan will generally be paid to you in cash only.

ARTICLE VI BENEFITS AND DISTRIBUTIONS UPON DEATH

What happens if I die while working for the Employer?

If you die while still employed by the Employer, then your vested account balance will be used to provide your beneficiary with a death benefit.

Who is the beneficiary of my death benefit?

Beneficiary designation. You may designate a beneficiary for your death benefit. The designation must be made in accordance with the procedures set forth by the Administrator. You should periodically review your designation to ensure it continues to meet your goals.

Divorce. If you have designated your spouse as your beneficiary for all or a part of your death benefit, then upon your divorce, the designation is no longer valid. This means that if you do not select a new beneficiary after your divorce, then you are treated as not having a beneficiary for that portion of the death benefit (unless you have remarried).

No beneficiary designation. At the time of your death, if you have not designated a beneficiary or your beneficiary is also not alive, the death benefit will be paid in the following order of priority to:

- (a) your surviving spouse
- (b) your children, including adopted children in equal shares (and if a child is not living, that child's share will be distributed to that child's heirs)
- (c) your surviving parents, in equal shares
- (d) your estate

How will the death benefit be paid to my beneficiary?

Form of distribution. If the death benefit payable to a beneficiary does not exceed \$5,000, then the benefit may only be paid as a lump-sum. If the death benefit exceeds \$5,000, your beneficiary may elect to have the death benefit paid in:

- a single lump-sum payment
- installments over a period of not more than the assumed life expectancy of your beneficiary
- partial withdrawals

When must the last payment be made to my beneficiary?

The law generally restricts the ability of a retirement plan to be used as a method of retaining money for purposes of your death estate. Thus, there are rules that are designed to ensure that death benefits are distributable to beneficiaries within certain time periods.

Regardless of the method of distribution selected, if your designated beneficiary is a person (rather than your estate or some trusts) then minimum distributions of your death benefit will begin by the end of the year following the year of your death ("1-year rule") and must be paid over a period not extending beyond your beneficiary's life expectancy. If your spouse is the beneficiary, then under the "1-year rule," the start of payments will be delayed until the year in which you would have attained age 70 1/2 (if you were born before July 1, 1949) or age 72 (if you were born after June 30, 1949) unless your spouse elects to begin distributions over his or her life expectancy before then. However, instead of the "1-year rule" your beneficiary may elect to have the entire death benefit paid by the end of the fifth year following the year of your death (the "5-year rule"). Generally, if your beneficiary is not a person, your entire death benefit must be paid under the "5-year rule."

What happens if I'm a participant, terminate employment and die before receiving all my benefits?

If you terminate employment with the Employer and subsequently die, your beneficiary will be entitled to your remaining interest in the Plan at the time of your death. The provision in the Plan providing for full vesting of your benefit upon death does not apply if you die after terminating employment.

**ARTICLE VII
TAX TREATMENT OF DISTRIBUTIONS**

What are my tax consequences when I receive a distribution from the Plan?

Generally, you must include any Plan distribution in your taxable income in the year in which you receive the distribution. The tax treatment may also depend on your age when you receive the distribution. Certain distributions made to you when you are under age 59 1/2 could be subject to an additional 10% tax.

Can I elect a rollover to reduce or defer tax on my distribution?

Rollover or Direct Transfer. You may reduce, or defer entirely, the tax due on your distribution through use of one of the following methods:

(a) **60-day rollover.** The rollover of all or a portion of the distribution to an Individual Retirement Account or Annuity (IRA) or another employer retirement plan willing to accept the rollover. This will result in no tax being due until you begin withdrawing funds from the IRA or other qualified employer plan. The rollover of the distribution, however, **MUST** be made within strict time frames (normally, within 60 days after you receive your distribution). Under certain circumstances, all or a portion of a distribution may not qualify for this rollover treatment. In addition, most distributions will be subject to mandatory federal income tax withholding at a rate of 20%. This will reduce the amount you actually receive. For this reason, if you wish to roll over all or a portion of your distribution amount, then the direct transfer option described in paragraph (b) below would be the better choice.

(b) **Direct rollover.** For most distributions, you may request that a direct transfer (sometimes referred to as a direct rollover) of all or a portion of a distribution be made to either an Individual Retirement Account or Annuity (IRA) or another employer retirement plan willing to accept the transfer. A direct transfer will result in no tax being due until you withdraw funds from the IRA or other employer plan. Like the rollover, under certain circumstances all or a portion of the amount to be distributed may not qualify for this direct transfer. If you elect to actually receive the distribution rather than request a direct transfer, then in most cases 20% of the distribution amount will be withheld for federal income tax purposes.

Automatic IRA Rollover. If a mandatory distribution is being made to you because your vested interest in the Plan exceeds \$1,000 but does not exceed \$5,000, then the Plan will rollover your distribution to an IRA if you do not make an affirmative election to either receive or roll over the distribution. The IRA provider selected by the Plan will invest the rollover funds in a type of investment designed to preserve principal and provide a reasonable rate of return and liquidity (e.g., an interest-bearing account, a certificate of deposit or a money market fund). The IRA provider will charge your account for any expenses associated with the establishment and maintenance of the IRA and with the IRA investments. You may transfer the IRA funds to any other IRA you choose. You will be provided with details regarding the IRA at the time you are entitled to a distribution. However, you may contact the Administrator at the address and telephone number indicated in this summary for further information regarding the Plan's automatic rollover provisions, the IRA provider, and the fees and expenses associated with the IRA.

Tax Notice. WHENEVER YOU RECEIVE A DISTRIBUTION THAT IS AN ELIGIBLE ROLLOVER DISTRIBUTION, THE ADMINISTRATOR WILL DELIVER TO YOU A MORE DETAILED EXPLANATION OF THESE OPTIONS. HOWEVER, THE RULES WHICH DETERMINE WHETHER YOU QUALIFY FOR FAVORABLE TAX TREATMENT ARE VERY COMPLEX. YOU SHOULD CONSULT WITH QUALIFIED TAX COUNSEL BEFORE MAKING A CHOICE.

**ARTICLE VIII
PROTECTED BENEFITS AND CLAIMS PROCEDURES**

Are my benefits protected?

As a general rule, your interest in your account, including your "vested interest," may not be alienated. This means that your interest may not be sold, used as collateral for a loan, given away or otherwise transferred. In addition, your creditors (other than the IRS) may not attach, garnish or otherwise interfere with your benefits under the Plan.

Are there any exceptions to the general rule?

There are three exceptions to this general rule. The Administrator must honor a "qualified domestic relations order." A "qualified domestic relations order" is defined as a decree or order issued by a court that obligates you to pay child support or alimony, or otherwise allocates a portion of your assets in the Plan to your spouse, former spouse, children or other dependents. If a qualified domestic relations order is received by the Administrator, all or a portion of your benefits may be used to satisfy that obligation. The Administrator will determine the validity of any domestic relations order received. You and your beneficiaries can obtain from the Administrator, without charge, a copy of the procedure used by the Administrator to determine whether a qualified domestic relations order is valid.

The second exception applies if you are involved with the Plan's operation. If you are found liable for any action that adversely affects the Plan, the Administrator can offset your benefits by the amount that you are ordered or required by a court to pay the Plan. All or a portion of your benefits may be used to satisfy any such obligation to the Plan.

The last exception applies to Federal tax levies and judgments. The Federal government is able to use your interest in the Plan to enforce a Federal tax levy and to collect a judgment resulting from an unpaid tax assessment.

Can the Plan be amended?

Your Employer has the right to amend the Plan at any time. In no event, however, will any amendment authorize or permit any part of the Plan assets to be used for purposes other than the exclusive benefit of participants or their beneficiaries. Additionally, no amendment will cause any reduction in the amount credited to your account.

What happens if the Plan is discontinued or terminated?

Although your Employer intends to maintain the Plan indefinitely, your Employer reserves the right to terminate the Plan at any time. Upon termination, no further contributions will be made to the Plan and all amounts credited to your accounts will become 100% vested. Your Employer will direct the distribution of your accounts in a manner permitted by the Plan as soon as practicable. (See the question entitled "How will my benefits be paid to me?" for a further explanation.) You will be notified if the Plan is terminated.

How do I submit a claim for Plan benefits?

Benefits will generally be paid to you and your beneficiaries without the necessity for formal claims. Contact the Administrator if you are entitled to benefits or if you think an error has been made in determining your benefits. Any such request should be in writing.

If the Administrator determines the claim is valid, then you will receive a statement describing the amount of benefit, the method or methods of payment, the timing of distributions and other information relevant to the payment of the benefit.

What if my benefits are denied?

Your request for Plan benefits will be considered a claim for Plan benefits, and it will be subject to a full and fair review. If your claim is wholly or partially denied, the Administrator will provide you with notification of the Plan's adverse determination. This written or electronic notification will be provided to you within a reasonable period of time.

**ARTICLE IX
GENERAL INFORMATION ABOUT THE PLAN**

There is certain general information which you may need to know about the Plan. This information has been summarized for you in this Article.

Plan Name

The full name of the Plan is Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees.

Plan Effective Dates

This Plan was originally effective on November 14, 2018. The amended and restated provisions of the Plan become effective on July 1, 2023. However, this restatement was made to conform the Plan to new tax laws and some provisions may be retroactively effective.

Other Plan Information

Valuations of the Plan assets are generally made every business day. Certain distributions are based on the Anniversary Date of the Plan. This date is the last day of the Plan Year.

The Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1st and ends on December 31st.

Employer Information

Your Employer's name, address and identification number are:

Kern County Hospital Authority
1700 Mt. Vernon Avenue
Bakersfield, California 93306

47-5618278

Administrator Information

The Administrator is responsible for the day-to-day administration and operation of the Plan. For example, the Administrator maintains the Plan records, including your account information, provides you with the forms you need to complete for Plan participation, and directs the payment of your account at the appropriate time. The Administrator will also allow you to review the formal Plan document and certain other materials related to the Plan. If you have any questions about the Plan or your participation, you should contact the Administrator. The Administrator may designate other parties to perform some duties of the Administrator.

The Administrator has the complete power, in its sole discretion, to determine all questions arising in connection with the administration, interpretation, and application of the Plan (and any related documents and underlying policies). Any such determination by the Administrator is conclusive and binding upon all persons.

Your Administrator's name and contact information are:

Kern County Hospital Authority
1700 Mt. Vernon Avenue
Bakersfield, California 93306

(661) 862-7564

Plan Trustee Information and Plan Funding Medium

All money that is contributed to the Plan is held in a trust fund. The Trustee is responsible for the safekeeping of the trust fund and must hold and invest Plan assets in a prudent manner and in the best interest of you and your beneficiaries. The trust fund established by the Plan's Trustee(s) will be the funding medium used for the accumulation of assets from which benefits will be distributed. While all the Plan assets are held in a trust fund, the Administrator separately accounts for each Participant's interest in the Plan.

The Plan's Trustee is:

Voya Institutional Trust Company

One Orange Way
Windsor, Connecticut 06095

Telephone: (860) 580-2511



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

August 16, 2023

Subject: Proposed Value Rental Supplement to the Addendum to Agreement 078-2018 with UBEO West, LLC formally known as Ray A Morgan Company

Recommended Action: Approve; Authorize Chairman to sign, and the Chief Executive Officer to sign receipt of delivery

Summary:

Kern Medical is requesting your Board authorize the Chairman to sign the proposed Value Rental Supplement that outlines the payment amount and IT equipment approved by your Board at the July 19, 2023 Kern County Hospital Authority, Board of Governors' regular meeting. This Supplement is required to trigger the effectiveness of the previously approved Addendum for additional IT equipment.

Therefore, it is recommended that your Board approve the proposed Value Rental Supplement to the Addendum to Agreement 078-2018 with UBEO West, LLC formally known as Ray A Morgan Company to initiate the previously approved Addendum for additional IT equipment, authorize the Chairman to sign, and approve the Chief Executive Officer to approve any other additional documents to support the delivery of the equipment.



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

August 16, 2023

Subject: Proposed supplemental documents in support of the Master Lease Schedule No. 682210 with Presidio Technology Capital, LLC approved by the Kern County Hospital Authority's Board of Governors' regular meeting on July 19, 2023 (091-2023)

Recommended Action: Approve; Adopt Resolution; Authorize Chairman to sign, and delegate signing authority to the Chief Executive Officer for any further required documentation

Summary:

Kern Medical is requesting your Board authorize the Chairman to sign the proposed supplemental documents; the Presidio Technology Capital Financing Application for State and Local Government (not included in the initial document package), an updated Opinion of Council to replace the previously approved Opinion of Counsel (error found with printed Lease Schedule Number), and adopt the resolution in support of the execution and delivery of the Master Lease, Schedule No. 682210, approved at the July 19, 2023 Board of Governors' meeting.

Therefore, it is recommended that your Board approve the proposed supplemental documents with Presidio Technology Capital, LLC, adopt the proposed resolution in support of the Master Lease Schedule for the purchase of IT equipment, authorize the Chairman to sign, and approve the Chief Executive Officer to approve any other additional documents to support the delivery of the equipment.

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

In the matter of:

Resolution No. _____

**FINANCING THE PURCHASE OF PRESIDIO
SOFTWARE AND EQUIPMENT IN SUPPORT
OF THE TELEMETRY AND PACS PROJECTS FOR
THE KERN COUNTY HOSPITAL AUTHORITY**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors the Kern County Hospital Authority at an official meeting thereof on the 16th day of August, 2023, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The Kern County Hospital Authority (“Hospital Authority”) has the power to incur indebtedness and to borrow money and issue bonds, subject to the approval of the Board of Supervisors; and

(b) The Hospital Authority also has the power to purchase supplies, equipment, materials, property, and services, and the power to enter into contracts, pursuant to Chapter

5.5 (commencing with Section 101852) of Part 4 of Division 101 of the Health and Safety Code; and

(c) The Hospital Authority has entered into an agreement with Novarad Corporation to implement the Picture Archiving and Communication System (PACS) which requires an additional purchase of software and equipment; and

(d) Presidio Technology Capital, LLC desires to lend Hospital Authority monies in the lease/purchase of this software and equipment and requires a resolution by the Hospital Authority's governing body to do so.

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

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

2. This Board finds the best interests of the Hospital Authority shall be served by entering into an agreement to borrow monies for the lease/purchase of equipment.

3. The provisions of this Resolution shall be effective, in force and operative as of the 16th day of August 2023.

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

Kern Medical Center
Presidio Technology Capital, LLC

Financing Application for State and Local Government

| | | | |
|--|------------------------|--------------------------------|---|
| Borrower's Legal Name as Shown on Audited Financials: | | Kern County Hospital Authority | |
| If Borrower's Parent is Different, Input Parent Name Here: | | | |
| Website to Obtain 3 years of Audited Financials Found At: | | Already Provided | |
| Street Address | 1700 Mount Vernon Ave. | | |
| City | Bakersfield | Invoices to be sent to: | |
| State | California | Contact | Han Nguyen |
| Zip Code | 93306 | Department | Accounts Payable |
| Contact | | Address | PO Box 3519 |
| Phone Number | | City, State, Zip | Bakersfield, CA 93385 |
| Fax Number | | Phone & Fax Number | |
| Email | | Email | Han.Nguyen@kernmedical.com |
| EIN (Required) | 47-5618278 | Special Instructions | Send to: accountspayable@kernmedical.com |

Double-clicking on a response box will allow you to add or remove a check mark

- 1) Have you ever defaulted or non-appropriated on a lease purchase, loan or bond obligation? Yes: No:
- 2) Are you currently operating under emergency financial/fiscal management or have you in the past 3 years? Yes: No:
- 3) Are there any known issues that could impact the future repayment of this financing? Yes: No:
- 4) Will any loan or grant proceeds be used as the dedicated source of repayment for this financing? Yes: No:
- 5) Have you issued or do you reasonably intend to issue more than \$10MM in tax exempt debt during the calendar year? Yes: No:
- 6) For any payments due in your current FY, have those payments been formally appropriated? Yes: No:
 If no or if your 1st payment is due in next fiscal year, has this been formally approved by board resolution? Yes: No:
 PTC cannot accept Erate funds. Are Erate funds being used for repayment of this financing? Yes: No:
- 7) Will payments be made from your General Fund? Yes: No:
 If no, which fund & provide page in most recent audit where found? Cash Account

| |
|--|
| 8) Will any portion of the financed property be used by a private corporation or individual? Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/> |
| If Yes, what % will be used by a private corporation or individual? |

- 9) Do you operate under home-rule (a charter)? Yes: No: Unsure:
- 10) Will the proceeds of this lease be used entirely for software? Yes: No:
 If "Yes", will the software be installed on equipment that you own or are financing? Own: Financed:
- 11) Will any portion of the financed property be affixed to real property? Yes: No:
- 12) Are you self insured for property damage? Yes: No:
- 13) Are you self insured for liability? Yes: No:
- 14) Are you a member of a managed risk pool for insurance? Yes: No:
- 15) Is this replacing equipment, expanding an existing system or completely brand new? Replacement: Expansion: New:

| | |
|---|-----|
| If replacement, what is the age of the equipment it is replacing? | |
| If replacement or expansion, is the existing equipment paid off? | N/A |

| | | | |
|--|--|------------------|--|
| 16) What is your population or enrollment? | | As of what date? | |
| 17) What is your tax-based assessed value? | | As of what date? | |

18) Equipment/Product Description (please refrain from using acronyms or part numbers):
 Additional network equipment and monitoring software.

19) What is the purpose of this acquisition, what makes it essential & what benefits are expected (eg, cost savings, productivity, functionality, etc.)?
 If this financing is for entirely prepaid services, please also provide a description of the departments/functions being supported.
 This equipment is needed to support our new patient monitoring system and to provide network tools to ensure compliance.

| | | | |
|----------------------|----------------|--------|------------------------------|
| Submitted By (Name): | Russell Bigler | Title: | Chairman, Board of Governors |
| Signature | | Date: | 8/16/2023 |



July 13, 2023

Presidio Technology Capital, LLC
2 Sun Court, Suite 120
Norcross, GA 30092-9204

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

Ladies and Gentlemen:

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

1. Lessee is a local unit of government in the State of California and the Lessee has full power and authority to enter into the Lease.

2. The Master Lease and Lease Schedule No. 682210 have each been duly authorized and have been duly executed and delivered by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Master Lease and Lease Schedule No. 682210 constitute the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

3. The Certificate of Acceptance has been duly authorized by Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

4. The Equipment to be leased pursuant to the Lease constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.

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A Designated Public Hospital

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

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

6. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery or performance by Lessee of the Master Lease or Lease Schedule No. 682210 or in any way to contest the validity of the Lease, to contest or question the creation or existence of Lessee or its governing body or the authority or ability of Lessee to execute or deliver the Lease or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin Lessee from annually appropriating sufficient funds to pay the rental payments and other amounts contemplated by the Lease.

7. The resolution adopted by Lessee's governing body authorizing the execution and delivery of the Master Lease, Lease Schedule No. 682210, and the Certificate of Acceptance and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.

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

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

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

Respectfully submitted,



Shannon Hochstein
Hospital Counsel
Kern County Hospital Authority



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

August 16, 2023

Subject: Proposed Price Change and Renewal Amendment to the Master Customer Agreement (#16016) with Experian Health, Inc.

Recommended Action: Approve; Authorize Chairman to Sign

Summary:

Kern Medical is requesting your Board approve the proposed Price Change and Renewal Amendment to the current Master Customer Agreement with Experian Health, Inc. Currently Experian provides services to Kern Medical which include insurance eligibility verification, address verification, patient payment estimates (in compliance with CMS price transparency regulations) and MBI lookup functionality (allowing Kern Medical to bill Medicare for reimbursement for costs associated with being a teaching hospital under the graduate medical education program). Experian has negotiated a price reduction for eligibility verification, MBI lookup, and the patient estimate applications. This proposed price reduction represents a projected annual savings of \$22,000 annually or \$66,000 for the three (3) year renewal period.

Without the proposed Price Change and Renewal Amendment, Kern Medical would be unable to access the automated Experian Revenue Cycle applications in a Cerner Millennium environment, which would impede productivity, disrupt workflow, disable Patient Access functionality for verification of insurance eligibility and coverage, and adversely impact the ability to provide patient cost estimates which risks non-compliance with CMS price transparency regulations regarding "good faith estimate letters" under the No Surprises Act. Not renewing this agreement would also contribute to missed opportunities to achieve POS cash collection goals and undermine strategic priorities of Integrated Delivery Systems, Patient Experience, and Financial Strength.

Counsel is unable to approve as to form due to non-standard terms which include no right to cancel the Agreement prior to the renewal date and an auto-renewing term. Efforts were made to negotiate with the Vendor, but to no avail.

Therefore, it is recommended that the Board approve the proposed Price Change and Renewal Amendment to the current Master Customer Agreement with Experian Health, Inc., for a term of three (3) years effective upon the signature of Experian Health, Inc., increasing the maximum payable by \$285,840, from \$802,812 to \$1,088,652, to cover the term, and authorize the Chairman to sign.

| Supplier | Customer |  |
|--|---|---|
| Experian Health, Inc. 720 Cool Springs Blvd., Suite 200 Franklin, TN 37067 (615) 661-5657 or (888) 661-5657 | Kern County Hospital Authority 1700 Mt. Vernon Ave. Bakersfield, CA 93306 | |

Price Change and Renewal Amendment

This Price Change and Renewal Amendment ("Amendment") shall be made a part of the Master Customer Agreement dated September 14, 2016, including any schedules, addenda and amendments thereto, ("Agreement") between Experian Health, Inc. ("Experian Health") and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("Customer", and together with Experian Health collectively, the "Parties"). The Amendment is subject to the Agreement and the Terms and Conditions which are hereby incorporated by reference. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Agreement. This Amendment shall be effective as of the date of signature by Experian Health ("Amendment Effective Date").

PRICE CHANGE

TRANSACTION FEE PRICE CHANGE. Customer's new transaction price specific to the product or products listed below shall be as follows. Customer's pricing pursuant to the Agreement will not change except as expressly modified below. This price change shall be effective the first day of the month following the Amendment Effective Date.

ELIGIBILITY VERIFICATION TRANSACTION FEES. The Eligibility Verification transaction fee ("Eligibility Transaction Fee") includes eligibility verification transactions across all product platforms, including eCare NEXT®, IntelliSource, EDI, OneSource, BatchSource and Claims as well as any other transactions triggered by another Product, including Patient Estimates and ClaimSource. The Eligibility Transaction Fee shall be equal to the sum of the Monthly Base Rate plus the Excess Usage Fee, if any, and shall be billed based on Customer's selection below. These fees are billed on a monthly basis beginning the first calendar month following the Amendment Effective Date ("EV Billing Date"). The Eligibility Transaction Fee does not include Pass-Through Fees. In no event will the Eligibility Transaction Fee be less than the Monthly Base Rate for Customer's selected pricing tier. Prior to the EV Billing Date, Customer shall be billed per the Agreement.

Customer may change pricing tiers to a lower tier ("Downward Price Change") once per calendar quarter by providing written notice to Experian Health ("Price Change Notice"). Customer may change pricing tiers to a higher tier at any time ("Upward Price Change") by providing a Price Change Notice. Any Price Change shall be effective the first day of the calendar month following Experian Health's receipt of the Price Change Notice.

| Eligibility Verification Transaction Fee | | | |
|--|-------------------|-------------------------------|--|
| Pricing Tier (Select One) | Monthly Base Rate | Monthly Max Transactions | Excess Usage Fees |
| 1 <input checked="" type="checkbox"/> | \$5,250 per month | 50,000 transactions per month | \$0.115 per transaction in excess of 50,000 transactions per month |
| 2 <input type="checkbox"/> | \$5,700 per month | 60,000 transactions per month | \$0.105 per transaction in excess of 60,000 transactions per month |
| 3 <input type="checkbox"/> | \$6,300 per month | 70,000 transactions per month | \$0.100 per transaction in excess of 70,000 transactions per month |

MBI LOOKUP TRANSACTION FEES. The MBI Lookup Transaction Fee ("MBI Lookup Transaction Fee") shall be equal to the sum of the Monthly Base Rate plus the Excess Usage Fee, if any, and shall be billed based on Customer's selection below. These fees are billed on a monthly basis beginning the first calendar month following the Amendment Effective Date ("MBI Lookup Billing Date"). The MBI Lookup Transaction Fee does not include Pass-Through Fees. In no event will the MBI Lookup Transaction Fee be less than the Monthly Base Rate for Customer's selected pricing tier. Prior to the MBI Lookup Billing Date, Customer shall be billed at the Excess Usage Rate.

Customer may change pricing tiers to a lower tier ("Downward Price Change") once per calendar quarter by providing written notice to Experian Health ("Price Change Notice"). Customer may change pricing tiers to a higher tier at any time ("Upward Price Change") by providing a Price Change Notice. Any Price Change shall be effective the first day of the calendar month following Experian Health's receipt of the Price Change Notice.

| MBI Lookup Transaction Fee | | | |
|---------------------------------------|-------------------|---------------------------------|---|
| Pricing Tier (Select One) | Monthly Base Rate | Monthly Max Transactions | Excess Usage Fees |
| 1 <input type="checkbox"/> | \$47.50 per month | 500 patient records per month | \$0.105 per patient record in excess of 500 patient records per month |
| 2 <input checked="" type="checkbox"/> | \$90 per month | 1,000 patient records per month | \$0.100 per patient record in excess of 1,000 patient records per month |

SUBSCRIPTION FEE PRICE CHANGE. Customer's new Subscription Fee for the product or products listed below shall be as follows. Customer's pricing pursuant to the Agreement will not change except as expressly modified below. This price change shall be effective the first day of the month following the Amendment Effective Date.

| Product Name | Subscription Fee |
|--|------------------|
| Patient Estimates Facility – uses information from a provider's charge master and payer contracted rates by procedure and applies eligibility and benefits information from the patient's health insurance plan. | \$31,200 |

PASS-THROUGH FEES. Fees exclude pass-through fees ("Pass-Through Fees") from state and federal governmental entities ("Governmental Entities"), Medicaid and Medicare Managed Care Organizations ("MCOs"), third-party payers, communication tariffs, and/or other similar fees. Without prior notice, Pass-Through Fees will be billed monthly in addition to all other Fees at the cost that Experian Health pays to obtain transaction data. Notwithstanding any other provision of the Agreement to the contrary, Experian Health shall have the right to increase the Pass-Through Fees to offset any increases in rates, changes, or other costs from Governmental Entities, MCOs and other third parties, including without limitation Medicaid and Medicare administrators, or any increase in the cost of providing services hereunder resulting from rules, regulations and operating procedures of any federal, state or local agency or regulatory authority. The Pass-Through Fees are not subject to approval by Experian Health.

MISCELLANEOUS

SCOPE CHANGES. Customer requests for changes to an existing Product may result in modifications to scope of service. The Experian Health team will review requested changes and if material change in scope is needed, the additional work will be documented and priced according to the Change Order process, as described herein. If Customer request is out of scope of the current version/configuration of the Product, and Experian Health determines, in its sole discretion, that the work is feasible Experian Health will prepare a Change Order proposal with appropriate costs. The Change Order proposal shall document any Customer-requested customization or deviation from a best practice workflow and will include all associated fees. Prior to the commencement of any work, Customer must agree to a Change Order document in writing, which will include all fees and the proposed timeline based on the requested changes.

TERM OF AGREEMENT AND RENEWAL. Experian Health reserves the right to rescind the fee structure and terms if this Amendment is not executed within 45 days of the date this Amendment was submitted to Customer. The Agreement, as amended by this Amendment, shall continue for a term of 36 months from the Amendment Effective Date ("Initial Term") and will automatically renew for an unlimited number of 12-month periods ("Renewal Term"). The Agreement may be terminated by either Party effective at the end of the Initial Term or at the end of any Renewal Term (if applicable) with a 90-day written termination notice. This Term of Agreement and Renewal provision shall replace and supersede any term, renewal and termination provision previously negotiated between the Parties with the exception of any Termination for Cause provision.

Notwithstanding the foregoing, if Customer ceases business operations or closes its facilities, Customer may terminate this Amendment with a thirty (30) day written termination notice. In the event that Customer terminates its relationship with Quorum, this Amendment shall continue in full force and effect and Customer shall have no termination right because of such event.

Whenever the terms or conditions of the Agreement and this Amendment are in conflict, the terms of this Amendment control. Except as specifically modified by the terms of this Amendment, all of the Agreement remains in full force and effect. This Amendment may be executed by digital signature and in any number of counterparts, each of which is an original, but all counterparts of which constitute the same instrument.

IN WITNESS WHEREOF, an authorized representative of each of the Parties has executed this Amendment as of the dates written below.

EXPERIAN HEALTH, INC.

KERN COUNTY HOSPITAL AUTHORITY

Signed By: _____
 Print Name: Jeff Corley
 Title: Senior Director - Operations
 Date: _____

Signed By: _____
 Print Name: Russell Bigler
 Title: Chairman, Board of Governors
 Date: _____

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



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

August 16, 2023

Subject: Proposed Agreement with Hamilton Medical, Inc. for the purchase of Medical Ventilators in an amount not to exceed \$1,000,000 over the five-year term of the agreement

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting your Board approve the proposed agreement with Hamilton Medical, Inc. for the purchase of Medical Ventilators. Kern Medical's current fleet of Medical Ventilators range in age from 15 to 17 years, while the typical life cycle spans only 10 years. The manufacturer of the ventilators has also progressed to new models and no longer provides support for these ventilators. They will continue to provide replacement parts while available, however will be unable to supply replacements when the inventory is depleted.

Kern Medical compared two leaders in the market for Medical Ventilators, Hamilton and Draeger. After review of the products, pricing was consistent across both models, however the performance and functionality of the Hamilton were significantly preferred by staff and physicians.

This agreement will allow Kern Medical to replace its fleet of ventilators over a 5-year time at a cost of approximately \$200,000 per year. This agreement will provide Kern Medical flexibility in the event that any of its current fleet of Medical Ventilators become inoperable to accelerate purchases so that there are not delays in care.

Therefore, it is recommended that your Board approve the Agreement with Hamilton Medical, Inc. for the purchase of Medical Ventilators in an amount not to exceed \$1,000,000 over the five-year term of the agreement, and authorize the Chairman to sign.



IDN contract

Agreement No.: Kern2023
Partner: Kern Medical
Effective Date: Date of last signature below

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1 Hamilton Medical, Inc.

1.1 We live for ventilation technology

We live for ventilation technology. Technology that helps caregivers improve the lives of their critically ill patients. We believe that innovation is essential to meet the demands of critical care. To us, innovation is about realizing visionary new ideas and continuously improving existing products, always maintaining the focus on safe, individualized ventilation, as well as ease of use.

We learn from our customers and from multi-disciplinary experts. And we invest in long-term research and development. We develop Intelligent Ventilation solutions: devices and consumables for the ventilation of all critically ill patients – from neonates to adults.

1.2 One solution. Every situation.

For all patient populations

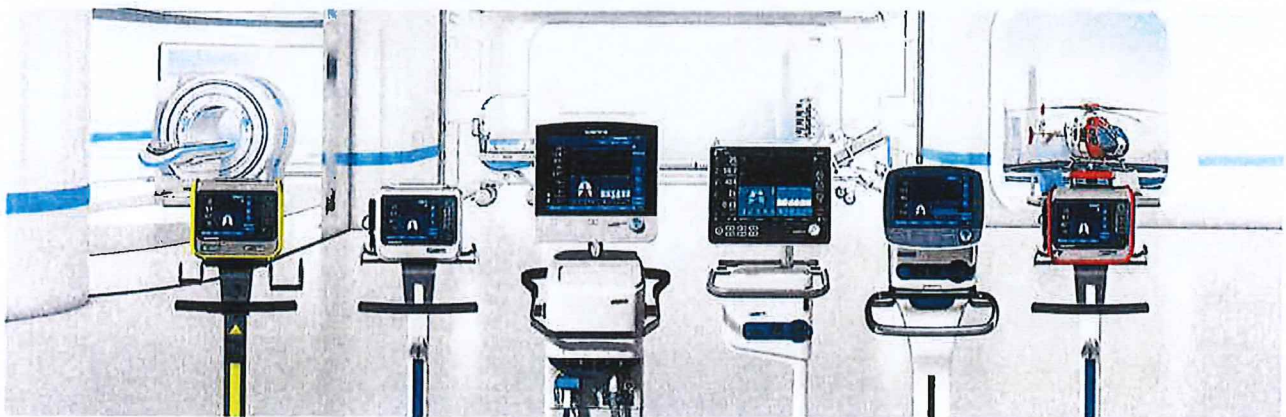
All Hamilton Medical ventilators provide Intelligent Ventilation solutions for all patient populations from neonates to adults, which can be used for almost any patient condition where mechanical ventilation is needed.

For all critical care environments

No matter where your patients are or where they need to go, Hamilton Medical ventilators can stay by their side providing continuous ventilatory support: in the intensive care unit, in the emergency department, during an MRI procedure, or in any transport situation in or outside the hospital.

All modern and traditional ventilation modes

Whether your patients are intubated and passive, or noninvasively ventilated and active, Hamilton Medical ventilators offer a wide range of advanced and traditional ventilation modes to meet all the needs of your ventilated patients, as well as comply with the ventilation protocols of your hospital.



1.3 Ease of use

In close cooperation with users and ventilation experts, our engineers have designed a user interface that is particularly intuitive. Switching between Hamilton Medical ventilators is easy because they are all operated according to the same principles.

The Ventilation Cockpit consolidates the monitoring data and displays it as intuitive graphics. These provide a quick overview of the patient's current ventilation status and provide a reliable basis for therapy decisions.

The Ventilation Cockpit

1. Main monitoring parameters

All of the main monitoring parameters and alarm limits at a glance. The large characters allow you to see them even from a distance.

2. Dynamic Lung

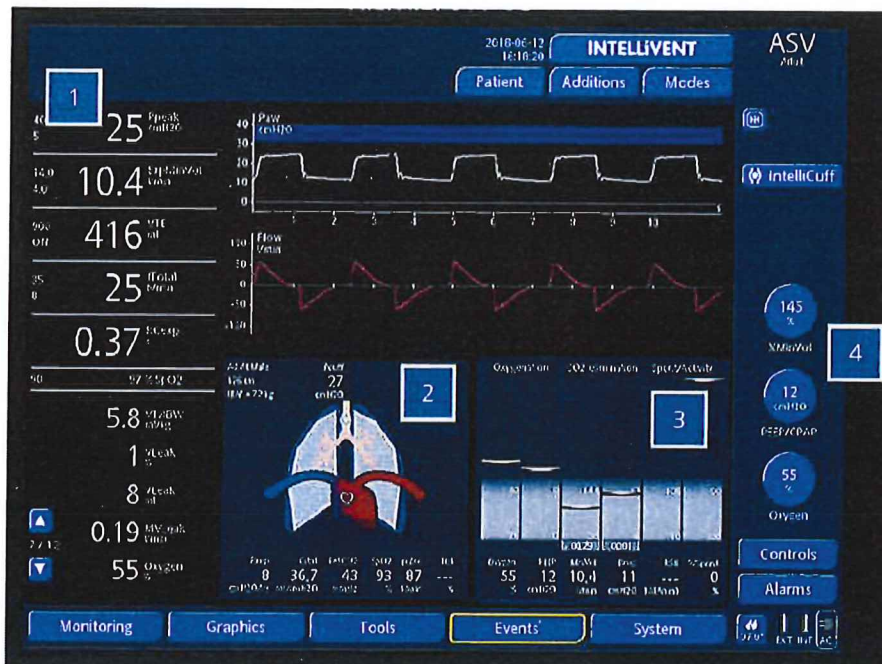
One quick look shows you tidal volume, lung compliance, resistance, and patient efforts/triggers in real-time. The lungs expand and contract in synchrony with the actual breaths.

3. Vent Status

The Vent Status panel displays six parameters related to the patient's dependence on the ventilator. When all values are in the weaning zone, the panel is framed in green, indicating that spontaneous breathing trials or extubation can be considered.

4. Direct access to main controls

Access and adjust the most important controls for the current mode directly on the main display.



2 Intelligent Ventilation solutions

2.1 Individualized, lung-protective ventilation



Adaptive Support Ventilation® (ASV)

continuously adjusts breath-by-breath, the respiratory rate, tidal volume, and inspiratory time depending on the patient's lung mechanics and effort, 24 hours a day, from intubation to extubation.



Standalone IntelliCuff cuff pressure controller

continuously measures and automatically maintains the user-set cuff pressure of an endotracheal or tracheostomy tube in real-time.

2.2 Additional services

E-learning

Hamilton Medical College provides free and open e-learning on mechanical ventilation and ventilators. Join at college.hamilton-medical.com

Free software simulations

To support and facilitate the training of clinical staff, we offer software simulations for all Hamilton Medical ventilators mimicking the ventilators' interface and functions. They can either be used online or downloaded to a computer.

Clinical Expert Workshops

Hamilton Medical regularly hosts clinical experts workshops to provide advanced training for respiratory experts. These workshops aim at encouraging the exchange of know-how and expertise about the latest developments in mechanical ventilation.

Universal ventilator consumables

Our accessories and consumables are specially developed for the highest possible patient safety and ease of use. Choose between reusable and disposable parts, according to your institutional policies.

24/7 Support hotline

Our 24/7 support hotline for clinical and technical support ensures short response times and helps to minimize downtime.

Service Training programs

Hamilton Medical provides service training programs for Clinical Engineers. The Service Training Programs include the service manuals and all support documentation. These trainings take place in Reno (NV), and consist of 2 days of instruction.

Tech Support Academy

The Tech Support Academy is a free e-learning platform for service technicians similar to the Hamilton Medical College. The access is restricted to Hamilton Medical certified technicians only.



3 Terms and conditions

These Terms and Conditions, Section 4 Pricing, and Section 5 Signature Page (collectively, the "Agreement") is effective as of the date of the last signature below ("Effective Date") between Hamilton Medical, Inc. (hereinafter "Hamilton") and The Kern Medical (hereinafter "Customer"). Hamilton and Customer may hereinafter be referred to individually as a "Party" or collectively as "Parties."

1. In consideration of Customer utilizing Hamilton as their sole source provider for ventilators over a period of five (5) years from the Effective Date (the "Term"), Hamilton will provide price protection for the Term, as described in Section 4.
2. Pricing in Section 4 of this Agreement will be considered the "Protected Price" for the Term. If Customer does not utilize Hamilton as their sole source provider for ventilators, Hamilton shall reserve the right to unilaterally terminate the Agreement, and any future purchase made by Customer would not be made pursuant to the Protected Price.
3. All products and services requested for purchase must be on Customer letterhead or from a Customer email address in order to receive the specific pricing outlined in this Agreement.
 - a. Customer will utilize Hamilton as its preferred vendor for the acquisition of ventilator platforms for the Term. Hamilton will provide Customer pricing incentives based on this Agreement.
 - b. Consumable items and extended warranties for each ventilator will be set at the appropriate HealthTrust Pricing Tier, except as set forth in this Agreement.
4. Hamilton will provide Customer one (1) service training tuition with the initial purchase of ventilators. Additional service training tuitions can be purchased from Hamilton for \$2,495.00 each. These programs will be held at a regularly scheduled training course in Reno, NV. They will include Service Training for each respective ventilator model(s) purchased. Additional technicians attending each course will be charged based on the current MSRP of the Service Training Tuition Program, and service training tuition does not include travel expenses for Customer.

These programs are intended for the purpose of training individuals or designees of Customer responsible for the repair, maintenance, and servicing of Hamilton instruments within Customer facilities, including but not limited to, employees and contractors of Customer partners who may be using the ventilators. Upon successful completion of each training program, the trainee will be considered manufacturer authorized to perform service, repairs and maintenance on Hamilton ventilators. Only individuals attending and successfully completing programs will be considered Service Authorized and receive a certificate of completion. Herein, "Service Authorized" means that those individuals who complete Hamilton's service training class may perform preventative maintenance or warranty repairs without voiding the remaining warranty. Copies of these certificates will be provided to the individual completing the program(s), kept on file at Hamilton and a copy will be forwarded to the Administrative Director of Respiratory Care and/or Manager of Respiratory Care for that specific facility.

Individuals that do not attend a Hamilton provided service training program are considered unauthorized to perform service and maintenance. Training of individuals, other than by a Hamilton Service Engineer, will not be recognized by Hamilton as an authorized individual. Service performed by an unauthorized individual may result in the voiding of warranty and liability of product(s).

Hamilton requires the following specifications to be compliant to perform field service by Customer personnel and/or third-party contractors that are designated by Customer:

- a. All individuals performing service must be Service Authorized.
- b. Service Authorized individuals are not permitted to train other individuals to perform service and repairs on Hamilton instruments.
- c. Service Authorized Individuals performing service on Hamilton instruments must follow all manufacturers' procedures including but not limited to the following:

- Swapping components, printed circuit boards, etc. from one instrument to another is not permitted without exception.
 - All Hamilton recommended procedures for annual preventative maintenance, life cycle component replacement, etc. must be completed as specified in service manuals.
 - All Hamilton recommended testing and verification of performance must be completed on all instruments receiving any level of service as specified in service manuals.
 - By placing a repair parts order, the user acknowledges the requirement of performing the task as described in the current revision Service Manual, described in Paragraph 5 below. Failure to do so will void the warranty.
 - Service requiring replacement of components, printed circuit boards, etc. must have the original component returned to Hamilton with all completed documentation (RGA). Failure to complete will result in the billing of the replacement component and the voiding of any associated warranty for that component.
5. One (1) copy of the Operator's Manual will be provided at no additional expense with the purchase of each ventilator. One (1) copy of the Service Manual will be provided to those individuals that successfully complete the Service Training program. Manuals and supplements will be provided at no additional expense. Electronic copies of the Operator's Manual are available at no additional charge, through www.hamilton-medical.com User Net.
 6. Installation of the purchased ventilator(s) or ventilator system(s) will be performed by Hamilton or its designee. Installation, calibration and performance verification procedures will be performed on-site at no additional expense. Installation includes unboxing, complete assembly, loading software licenses, and pre-operation calibration.
 7. The warranty terms and conditions for the ventilators are as follows:
 - a. All orders for ventilators will have a standard warranty of one (1) year of labor, and two (2) years of parts.
 - b. Failure to comply with warranty terms and conditions may result in the voiding of any warranty associated with that instrument or component replacement.
 - c. Components, printed circuit boards, etc. that need to be replaced while under warranty will require the serial number of the affected instrument and a description of the problem, prior to the item being released from Hamilton.
 - d. Preventative maintenance kits are not included as part of the warranty of Hamilton ventilators and are an additional cost.
 8. The Agreement will be applicable toward new products, services or technical enhancements that may be introduced to the market by Hamilton during the terms of this Agreement.
 9. Shipping terms will be FOB Destination, standard shipping. All freight forwarders, custom broker and any associated freight/shipment fees are the responsibility of Hamilton. In addition, Hamilton agrees, at Hamilton's own cost and expense, to keep the products fully insured against destruction and loss from the date of the shipment until delivery. For requests to expedite ordered items, the shipping expenses will be prepaid and added to the invoice.
 10. Acquisition of upgrades and optional performance enhancements will be based on the following:
 - a. Optional performance features will consist of the most current version of software and hardware cleared (FDA) for sales and distribution to the US market. Hamilton will provide these optional performance features to Customer at HealthTrust pricing.
 - b. Updates that are required to correct performance anomalies, recalls, or field corrections will be provided at no charge to Customer. This will include all hardware, software and labor for installation.
 - c. Labor for the installation of optional performance features will be billed at Hamilton's current Field Service Technician rate of \$285.00/hour, including travel time.

11. Hamilton does offer a Full-Service Warranty for all Hamilton ventilators available. This Warranty will provide for all service and repairs, scheduled preventative maintenance, all required parts and components for service or repairs and labor required for necessary service, and field service technician employed by Hamilton. Hamilton does not supply the cables, hardware, software or middleware needed to integrate Hamilton equipment with any facility's current hospital information or electronic medical record systems.
12. Payment terms are 2% 10 days Net 45 days of the invoice date. Payment terms are not extended while waiting for the issuance of credit.
13. Clinical/Technical telephone support shall be provided by Hamilton 24 hours a day, 7 days a week, 365 days a year, at no additional charge for the life of all Hamilton equipment.
14. Hamilton may accept trade-in ventilators to apply a credit toward the balance due based on the fair market value of trade-in products. Trade-in ventilators must be fully functional, including all accessories, and be validated before acceptance by Hamilton or an authorized equipment reseller. If a trade-in is found to be non-functioning or missing parts/accessories, an adjustment will be made to the credit due for quoted trade-ins.
15. Either Party may terminate this Agreement at any time without cause or penalty upon providing the other party with sixty (60) days advance written notice. Hamilton may delete any product from this Agreement at any time without cause or penalty upon providing Customer with sixty (60) days advance written notice. Notwithstanding the above, in the event of a breach of any material provision of this Agreement, the non-breaching Party shall promptly notify the breaching Party in writing of the specific nature of the material breach and shall request that it be cured. If the breaching Party does not cure the material breach within thirty (30) days after receipt of such notice, the non-breaching Party may immediately terminate this Agreement on written notice to the breaching Party, and such termination shall not preclude the non-breaching Party from pursuing any and all remedies available to it at law or in equity.
16. Hamilton can provide leasing options. The Agreement will be applicable to any purchases made through a leasing company. Leasing option quotations can be provided upon request.
17. Delivery shall occur within 60 days of Hamilton's receipt and acceptance of a purchase order. If delivery is delayed, Hamilton shall immediately provide Customer with written notice of such delay.
18. Hamilton and Customer will hold an annual business review at a mutually agreed-upon time. During these reviews, Hamilton and Customer representatives will work together to develop a purchasing plan for future orders as well as review all previous ventilator orders.
19. Notice. Notice required by this Agreement shall be sufficient if in writing via electronic mail or if personally delivered or mailed via U.S.P.S., first class and postage prepaid to:

In the case of Hamilton: _____ :
 Hamilton Medical, Inc.
 4655 Aircenter Circle
 Reno, NV 89502

In the case of Customer:
 Kern Medical

 Attn: _____

20. Hamilton shall indemnify, defend, and hold harmless Customer, and its boards, agencies, departments, employees, officers, , agents, contractors and volunteers, including but not limited to its hospital partners and their employees and/or independent contractors that use the ventilators (individually and/or collectively "Customer Representatives") from and against any and all third party claims, suits, actions, investigations, proceedings, liability, loss, damage, or demands, and all related costs, penalties, interest, or expenses (including reasonable attorneys' fees) at all levels of

litigation or other proceedings which may be sustained or incurred by Customer and/or Customer Representatives relating to or arising from (i) bodily injury, property damage, or other damage or injury caused by, in whole or in part, or contributed by Hamilton's breach of its representations or warranties in this Agreement; (ii) the negligence or willful misconduct of Hamilton and/or its employees or agents in connection with this Agreement. Notwithstanding the foregoing, Hamilton shall not be required to indemnify Customer to the extent such damage or injury is directly and solely caused by the negligent or wrongful act by Customer or any of the Customer Representatives.


21. Intellectual Property Infringement. Hamilton will indemnify and defend, at its own expense, any action against Customer and/or Customer Representatives brought by a third party to the extent that the action is based upon a claim that the products or software Hamilton manufactures infringes any U.S. patents or any copyrights or misappropriates any trade secrets of a third party, and Hamilton will pay those costs and damages finally awarded against Customer and/or Customer Representatives in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer: (i) notifying Hamilton promptly in writing of such action, and (ii) giving Hamilton sole control of the defense thereof and any related settlement negotiations; provided however that Hamilton shall not enter into any settlement that admits liability on Customer's behalf or otherwise imposes any obligation on Customer and/or Customer Representatives without its prior written consent, such consent not to be unreasonably withheld.
22. Limitation of Liability. In no event shall either Party, its employees, agents, or contractors be liable under this Agreement to the other Party for any consequential, incidental, indirect, exemplary, special or punitive damages, including any damages for business interruption, loss of use, revenue or profit, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not either Party was advised of the possibility of such damages.
23. No Partnership, Joint Venture, or Principal/Agent Relationship. Nothing in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Parties.
24. Assignment. The Parties shall not assign this Agreement without the written consent of the other Party; provided, however, Customer may assign this Agreement to (i) a parent, subsidiary, or affiliate, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Customer is participating. Any permitted assignee shall assume all obligations of its assignor under this Agreement.
25. Amendment. No amendment of this Agreement shall be valid unless it is in writing, specifies the nature and extent of the amendment, and is signed by the Parties.
26. Counterparts; Facsimile or Electronic Signature. This Agreement may be executed in counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party. Any executed counterpart to this Agreement may be delivered by .pdf or other electronic means, and any counterpart so delivered shall constitute an original for all purposes.
27. Waiver. Any waiver by any Party of default of any other Party to this Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the Parties which varies from the terms of this Agreement shall be a waiver of any Party's right to demand exact compliance with the terms of this Agreement. A waiver will only be effective when signed by the Party against which it is used.
28. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.

4 Pricing

| Product Number | HAMILTON-C6 Package Description | List Price | HealthTrust Price | Customer Pricing | Difference |
|-------------------------------|---|-------------|-------------------|------------------|-------------------|
| 160021 | HAMILTON-C6 Ventilator Package | \$63,448.84 | \$34,000.00 | \$29,193.77 | \$4,806.23 |
| 160029 | HAMILTON-C6 Trolley | \$2,651.31 | \$0.00 | \$0.00 | \$0.00 |
| 281533 | HAMILTON-G5/C6 Support Arm | \$718.74 | \$0.00 | \$0.00 | \$0.00 |
| 160969 | HAMILTON-C6 Humidifier Holder | \$291.73 | \$177.36 | \$169.89 | \$7.47 |
| 160760 | HAMILTON-C6 P/V Tool Pro Application | \$1,607.42 | \$1,323.00 | \$1,251.22 | \$71.78 |
| 160751 | HAMILTON-C6 Neonatal Software | \$2,143.22 | \$1,722.94 | \$1,629.46 | \$93.48 |
| 160752 | HAMILTON-C6 nCPAP-PS Software | \$2,164.03 | \$1,811.91 | \$1,698.31 | \$113.60 |
| 160971 | HAMILTON-C6 O2 Cylinder Holder | \$691.75 | \$584.25 | \$552.55 | \$31.70 |
| 160185 | HAMILTON-C6 Communication Board (CO2, SpO2) | \$546.00 | \$428.15 | \$350.00 | \$78.15 |
| 281718 | CAPNOSTAT-5 CO2 Sensor | \$2,844.28 | \$2,330.70 | \$1,800.00 | \$530.70 |
| 160784 | HAMILTON-C6 IntelliCuff Kit | \$2,923.31 | \$2,292.32 | \$2,167.96 | \$124.36 |
| 369136 | HAMILTON-C6 Battery Calibrator | \$534.97 | \$450.45 | \$425.00 | \$25.45 |
| Savings Per Ventilator | | | | | \$5,882.92 |

5 Signature Page

Hamilton Medical, Inc.



Robert Hamilton, CEO

08.09.2023

Date

Kern Medical

Name / Title

Date

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority

ADDITIONAL KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER TERMS & CONDITIONS

This Purchase Order is for the purchase of goods/services on the attached Bid, Proposal, Quote, Order, Agreement, or other ("Proposal"). If there is a conflict between the Proposal and this Purchase Order, then this Purchase Order shall control unless otherwise agreed to in writing. If the purchase is made through the HPG GPO, then the terms of the GPO will control.

1. Vendor shall provide products/services as set forth in the attached Proposal. Such order(s) may be modified by mutual written amendment of the Parties.

2. Vendor warrants possession of clear and unencumbered title to the products and/or services involved herein.

3. Vendors may be required to provide proof of insurance for one or more of the following types of insurance coverages as determined by KCHA:

(a) **Workers' Compensation Insurance** in accordance with the provisions of section 3700 of the California Labor Code. This policy shall include employer's liability insurance with limits of at least one million dollars (\$1,000,000). Include a cover sheet stating the business is a sole proprietorship, if applicable.

(b) **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as may be determined by the KCHA Risk Manager, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any Purchase Order or agreement with KCHA), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of vendor's performance of work hereunder. The amount of said insurance coverage required hereunder shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(c) **Professional Liability (Errors and Omissions) Insurance** for liability arising out of, or in connection with the performance of all required services under this Purchase Order or agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate unless otherwise indicated by KCHA's Risk Manager.

4. Vendor shall comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference. While on KCHA property, Vendor agrees to conform to KCHA policies and any direction given to them by KCHA staff including health mandates.

5. KCHA shall receive shipments during regular business hours, or otherwise as previously arranged, at its receiving dock or other designated locations, and shall perform receiving inspections(s) in a time and manner appropriate for the products involved.

6. The liabilities or obligations of KCHA with respect to its activities pursuant to this Purchase Order shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. Any limitations of liability shall not apply to, affect, or limit: (i) any of Vendor's duties to indemnify Customer in accordance with this Purchase Order and/or (ii) any third party claims.

7. This Purchase Order, including any attachments hereto and if applicable, the terms found at, <https://www.kernmedical.com/documents/content/KCHA-TC.pdf>, contains the entire agreement between KCHA and Vendor relating to the goods/services identified herein. By signing the KCHA Purchase Order Terms and Conditions, Vendor agrees that in the event there is any inconsistency or conflict between the KCHA Purchase Order terms and conditions and Vendor's terms and conditions, the KCHA Purchase Order terms and conditions shall control.

8. Access to Books and Records. Until the expiration of four (4) years after the expiration or termination of this Purchase Order, Vendor 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 Purchase Order and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Vendor provided under this Purchase order. Vendor further agrees that if it carries out any of its duties under this Purchase Order through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (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. Audits, Inspection and Retention of Records. Vendor agrees to maintain and make available to KCHA, accurate books and records relative to all its activities under this Purchase Order. Vendor shall permit KCHA 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 Purchase Order. Vendor 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 Purchase Order, 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 Purchase Order shall have the same rights conferred upon KCHA herein.

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

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

12. Non-collusion Covenant. Vendor 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 Purchase Order with KCHA. Vendor has received no incentive or special payments, nor considerations, not related to the provision of services under this Purchase Order from KCHA.

13. Vendor is aware that KCHA is a government entity and is subject to the California Public Records Act, Cal.Govt.Code §6250 et seq., the Brown Act, Cal. Govt. Code §54950 et seq., and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

KCHA Purchase Order Terms and Conditions approved by (Vendor) Hamilton Medical, Inc.

Signature: 

Print Name: Bob Hamilton

Title: CEO

Date: 8/10/2023



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

August 16, 2023

Subject: Proposed retroactive approval of Side Letter of Agreement to Memorandum of Understanding with Committee of Interns and Residents/Service Employees International Union, Local 1957

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests the Board approve the attached Side Letter of Agreement between Kern County Hospital Authority and Committee of Interns and Residents/Service Employees International Union 1957 (CIR/SEIU). CIR/SEIU represents Kern Medical's residents and fellows. This Side Letter will bring resolution to the grievance filed by CIR/SEIU on or about December 21, 2022.

Kern Medical has been in negotiations with CIR/SEIU regarding a grievance filed by resident physician C.R. related to Article V, Compensation, Section 3, Educational Fund, which states in relevant part: Each resident physician will be reimbursed an amount not to exceed \$1,100 per academic year for the purchase of...license application and examination fees; and Article V, Compensation Section 3 (sic), License Fees, which states, in relevant part: The Authority will reimburse 50% of licensing fees for the USMLE Step 3 or COMLEX-USA. These two provisions, when read together, create confusion on when or how a resident physician may draw available funds to pay for expenses, whether educational or licensing fees.

On or about June 30, 2023, after bargaining in good faith, the parties agreed to resolve the grievance by permitting residents to supplement the remaining 50% of licensing fees through the usage of the Educational Fund, retroactively to June 1, 2022, which coincides with the beginning of the 2022-2023 academic year, if a resident has accrued funds available in their Educational Fund account.

This side letter does not however, modify, alter, or nullify any other provisions contained with the current MOU.

Therefore, it is recommended that your Board retroactively approve the Side Letter of Agreement to the Memorandum of Understanding with Committee of Interns and Residents/Service Employees International Union 1957 to permit resident physicians to seek reimbursement from the Educational Fund to supplement the remaining 50% of the fee to cover the cost of USMLE Step 3 or COMLEX-USA licensing examination, effective July 1, 2022, and authorize the Chairman to sign.

SIDE LETTER OF AGREEMENT
BETWEEN
KERN COUNTY HOSPITAL AUTHORITY
AND
COMMITTEE OF INTERNS AND RESIDENTS/
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1957

This Side Letter of Agreement (“Side Letter”) between the Kern County Hospital Authority (“Authority”), which owns and operates Kern Medical Center, and the Committee of Interns and Residents/Service Employees International Union, Local 1957 (“CIR/SEIU”), representing the resident physicians, is entered into this 16th day of August, 2023, with respect to the following:

(A) The parties have previously entered into a Memorandum of Understanding (Agt. #042-2021) (“2021-2024 MOU”) regarding the wages, hours, and other terms and conditions of employment of the resident physicians for the period July 1, 2021 through June 30, 2024; and

(B) On or about December 21, 2022, resident physician C.R. filed a grievance with CIR/SEIU related to Article V, Compensation, Section 3, Educational Fund, which states, in relevant part: Each resident physician will be reimbursed an amount not to exceed \$1,100 per academic year for the purchase of...license application and examination fees; and

(C) Article V, Compensation, Section 3 (sic), License Fees, states, in relevant part: The Authority will reimburse 50% of licensing fees for the USMLE Step 3 or COMLEX-USA; and

(D) These two provisions, when read together, create confusion on when or how a resident physician may draw available funds to pay for expenses, whether educational or license fees; and

(E) On or about June 30, 2023, after negotiating in good faith, the parties agree to resolve the grievance filed by resident C.R. and to permit resident physicians to seek reimbursement of the remaining 50% of the USMLE Step 3 or COMLEX-USA, as applicable, during the term of the 2021-2024 MOU; and

(F) During the process of negotiating with CIR/SEIU to come to agreement on use of the educational fund, the parties agreed that, in order to ensure clarity and to memorialize the agreement, a Side Letter to the 2021-2024 MOU should be executed articulating the intent of the Authority to permit resident physicians to seek reimbursement of the remaining 50% of the USMLE Step 3 or COMLEX-USA, as applicable, during the term of the 2021-2024 MOU; and

(G) In consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties agree as follows:

1. The Authority shall continue to comply with the terms and conditions set forth in Article V, Compensation, Section 3 (sic), License Fees, which states, in relevant part: "The Authority will reimburse 50% of licensing fees for the USMLE Step 3 or COMLEX-USA, as applicable."
2. The Authority shall permit resident physicians to seek reimbursement from the Educational Fund to supplement the remaining 50% of the fee to cover the cost of USMLE Step 3 or COMLEX-USA licensing examination, if the resident physician has accrued funds, as outlined in the 2021-2024 MOU.
3. The current Educational Fund not to exceed amount of \$1,100 per academic year shall remain fixed at this amount.
4. Retroactive reimbursement shall apply for the 2022-2023 academic year only. Reimbursement of any funds, in whole or in part, is predicated upon the availability of accrued funds in the designated Educational Fund for each resident physician.
5. CIR/SEIU shall provide a spreadsheet of those resident physician who are believed to be impacted by the change in how funds in the Educational Fund are allocated for use. The Authority shall validate eligibility and, if applicable, reimburse resident physicians as prescribed in Article V, Compensation, Section 3 (sic), License Fees, paragraph c, which reads in relevant part:
 - "3. The Accounting Department has final approval of the request and shall remit reimbursement no later than thirty (30) days from the final approval or as soon as fiscally practicable.
 4. The reimbursable funds shall be made immediately available by the mechanism of choice by the Accounting Department (i.e. Direct Deposit and/or physical check)."
6. The parties agree that the provisions of this Side Letter resolve the grievance filed by resident physician C.R. on or about December 21, 2022.
7. This Side Letter shall not bar CIR/SEIU from following the grievance process outlined in the 2021-2024 MOU related to alleged violations of Article V, Compensation, unrelated to the USMLE Step 3 or COMLEX-USA licensing examinations.
8. The provisions of this Side Letter shall be effective retroactively to July 1, 2022.
9. All capitalized terms used in this Side Letter and not otherwise defined, shall have the meaning ascribed thereto in the 2021-2024 MOU.
10. This Side Letter shall be governed by and construed in accordance with the laws of the state of California.

11. This Side Letter may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
12. Except as provided herein, all other terms, conditions, and covenants of the 2021-2024 MOU shall remain in full force and effect.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

Committee of Interns and Residents/
Service Employees International Union,
Local 1957

By _____
Miles Kelley
CIR/SEIU Representative

Kern County Hospital Authority

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority



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

August 16, 2023

SUBJECT: Proposed retroactive Agreement for Professional Services with McMurtrey Lince, Inc., to provide general contracting, maintenance, and repair services.

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

Summary:

Kern Medical is requesting your Board's retroactive approval of the proposed Agreement for Professional Services with McMurtrey Lince, Inc., to provide general contracting, maintenance and repair services at Kern Medical and the outpatient clinic spaces. The term of the Agreement is for three (3) years, effective May 1, 2023, through April 30, 2026, with a total maximum payable of \$450,000.

This agreement is retroactive due to several equipment failures in the CT room which required immediate construction of a pad, IT runs, and electrical work for a temporary CT trailer.

Therefore, it is recommended that your Board a make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the retroactive Agreement for Professional Services with McMurtrey Lince, Inc., effective May 1, 2023 through April 30, 2026, with a maximum payable of \$450,000, and authorize the Chairman to sign.

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

THIS SCHEDULE shall be effective on: May 1, 2023 ("Effective Date") and shall terminate no later than April 30, 2026.
Kern County Hospital Authority Department: Engineering ("Responsible KCHA Department")
Located at: 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.
Service Provider: McMurtrey Lince, Inc. ("Consultant")
Located at: 1025 Espee Street Bakersfield, Ca 93301
Consultant is (select one): Sole Proprietorship
 Incorporated in the State of California.
 Other (specify) _____

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

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

(Select one of the following two)

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

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

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

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

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

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

KERN COUNTY HOSPITAL AUTHORITY

APPROVED AS TO CONTENT:
Responsible KCHA Department

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

By _____
Scott Thygeron, Chief Executive Officer

Date: _____

Date: _____

CONSULTANT

APPROVED AS TO FORM:
Legal Services Department

By _____
Name: James McMurtrey
Title: CEO

By Philip Jenkins
Philip Jenkins, Esq.
Hospital Counsel, Kern County Hospital Authority

Date: 8/9/2023

Date: 8/10/23

**EXHIBIT A
SERVICES**

Contractor shall provide general construction services as directed by Kern Medical on an as needed, when called upon basis.

EXHIBIT A-1

IRS FORM W-9

EXHIBIT "C"

Insurance

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by KCHA. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

KCHA reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers' Compensation and Employers Liability Insurance:

- (a) Required if Consultant has employees. If Consultant currently has no employees, Consultant's written confirmation of such will be required before execution of this Agreement. If Consultant engages any employees during the term of this Agreement or any extensions thereof, Consultant agrees to obtain the specified Workers' Compensation and Employers Liability insurance.
- (b) Workers' Compensation Insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of KCHA for all work performed by Consultant, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- (c) If Consultant has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.
- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by KCHA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving KCHA.
- (e) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between KCHA and Consultant and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) KCHA shall be named as an additional insured for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability Insurance (Errors and Omissions):

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

[Intentionally left blank]

EXHIBIT E
ADDITIONAL TERMS APPLICABLE TO CONSTRUCTION/ENGINEERING AGREEMENTS

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

I. COMPLIANCE WITH LABOR STANDARDS

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

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

II. APPRENTICESHIP PROGRAM

1. Compliance Required

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

2. Certification of Approval

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

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

3. Fund Contributions

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

4. Apprenticeship Standards

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

III. SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

1. INSURANCE

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

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

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

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

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

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

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

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

2. INDEMNIFICATION

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

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

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

RECITALS

A. KCHA is authorized, pursuant to Section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

B. The KCHA Department identified on the Schedule as the Responsible KCHA Department requires those services which are specified in **Exhibit A**.

C. KCHA desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.

D. The Chief Executive Officer ("CEO") has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

AGREEMENT

1. **Services to be Rendered.** Consultant shall provide the services and products described in **Exhibit A** ("**Services**").

2. **Compensation to Consultant.** KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.

3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.

4. **Term.** This term of this Agreement ("**Term**") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.

5. **Assignment.** Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO.

6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall permit KCHA to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as KCHA.

7. **Authority to Bind KCHA.** It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCHA to any agreements or undertakings.

8. **Indemnification.**

a. **General.** Consultant shall defend, indemnify, and hold harmless KCHA and KCHA's board members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives ("**KCHA Indemnified Parties**") from any losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs (including attorneys' fees of in-

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

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

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

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

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

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

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

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

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

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

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. **Captions and Interpretation.** Section headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. California Civil Code Section 1654 shall not apply to the interpretation of this Agreement.

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

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

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

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

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

34. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

35. **Sole Agreement.** This Agreement, including the Schedule and Exhibits, contains the entire agreement of the Parties relating to the Services, rights, obligations and covenants contained in this Agreement and assumed by the Parties. No inducements, representations or promises have been made, other than those stated in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

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

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

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

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

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

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



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

August 16, 2023

Subject: Proposed Agreement to Terminate Contractual Relationship with Meridian Healthcare Partners, Inc.

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve the attached proposed Agreement to Terminate Contractual Relationship with Meridian Healthcare Partners, Inc., for healthcare consulting and executive management services including supervision and management of the day-to-day operations of the hospital authority and Kern Medical, effective August 31, 2023 at 11:59 p.m. Meridian has provided such services since December 16, 2013. The services included one chief executive officer, five vice president level positions, seven director level positions, and two administrative assistants.

The current agreement with Meridian was approved retroactively by your Board on February 20, 2019, for an initial term of seven years from December 16, 2018 through December 15, 2025. On December 15, 2021, your Board approved an amendment to the agreement to extend the term by three years. As amended, the agreement provides for a 10-year term with the agreement terminating by operation of law on December 15, 2028. Approximately five and half years remain on the term.

Your Board has determined it is in the best interest of the hospital authority and Kern Medical to terminate the agreement. Relevant to the decision of your Board to terminate the agreement, without penalty or cause, is paragraph 40.1, which requires mutual written consent of the parties with notice of not less than 18 months. Termination also requires a simple majority vote of your Board.

In view of the mutuality requirement to terminate the agreement and the time remaining on the term, your Board directed the hospital authority's counsel to negotiate with counsel for Meridian appropriate terms to secure Meridian's mutual consent to terminate the agreement. Below is a brief summary of the agreed upon terms to terminate the agreement:

1. The hospital authority will pay Meridian a termination payment of \$850,000 on August 31, 2023. The termination payment is \$28,424 shy of two years of operation fee payments;

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

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

2. Meridian will have no obligation to provide services to the hospital authority after August 31, 2023;
3. Meridian has no obligation to staff vacant Meridian positions;
4. The monthly management fee will be reduced as positions are vacated;
5. There will be no reduction in the operation fee (which is paid annually on a prorated basis monthly) or the \$850,000 in the event Meridian positions are vacated between prior to August 31, 2023; and

Your Board has indicated a desire to maintain the status quo of those executives and individuals currently employed by Meridian to continue the ongoing operations of the hospital authority. As such, those employees will be afforded the opportunity to apply for same or similar positions at the hospital authority. Scott Thygerson, who was appointed chief executive officer effective December 1, 2021, will continue in that role as a hospital authority employee pursuant to an employment agreement approved by your Board on July 19, 2023.

Based on Meridian's current monthly management fee, which is comprised of salaries, benefits, insurance and taxes, business expenses, and operation fee, Meridian would be entitled to payment totaling \$29,157,442 over the remaining term from September 1, 2023 through December 15, 2028. By directly employing the Meridian employees, the hospital authority projects savings exceeding \$3,000,000 over the same period, based on the total payments due Meridian (\$29,157,442) and the termination payment (\$850,000).

Therefore, it is recommended that your Board approve the Agreement to Terminate Contractual Relationship with Meridian Healthcare Partners, Inc., effective August 31, 2023, authorizing payment of \$850,000 to Meridian Healthcare Partners, Inc. on August 31, 2023, and authorize the Chairman to sign.

AGREEMENT TO TERMINATE CONTRACTUAL RELATIONSHIP

This AGREEMENT TO TERMINATE CONTRACTUAL RELATIONSHIP (this "Agreement") is dated and effective as of this _____, 2023 (the "Effective Date"), by and among **KERN COUNTY HOSPITAL AUTHORITY**, a California local unit of government ("KCHA"), and **MERIDIAN HEALTHCARE PARTNERS, INC.**, a California corporation ("Meridian"), in Bakersfield, California, who agree and contract as set forth below in this Agreement. KCHA and Meridian are singularly referred to as a "party" on a generic basis and collectively as the "parties."

Recitals

This Agreement is made and entered into in reliance on the accuracy of the following facts and circumstances, which are acknowledged by the parties to be accurate, complete and true:

A. KCHA and Meridian entered the "Agreement For Professional Services Independent Contractor" dated February 20, 2019, as amended by the "Amendment No. 1 to Agreement For Professional Services Independent Contractor" dated September 16, 2020, and as amended by the "Amendment No. 2 to Agreement For Professional Services Independent Contractor" dated December 15, 2021, and a "Business Associate Agreement" dated December 16, 2018 (collectively, as the "Contract"), whereby Meridian agreed to provide KCHA consulting and executive management services including supervision and management of the day-to-day operations of Kern Medical Center ("KMC");

B. The parties agree that the termination of the Contract will be to their mutual benefit. The parties agree to terminate the Contract upon the conditions, provisions and terms of this Agreement;

NOW, THEREFORE, for good and valuable consideration the adequacy and receipt of which is acknowledged, the parties agree as follows:

Agreement

1. Termination of the Contract. For good and valuable consideration, the sufficiency of which is acknowledged by the parties, the parties hereby terminate the Contract, effective as of 11:59 p.m., Pacific Time, on August 31, 2023 (the "Termination Date"). Except as provided herein, the parties shall not have any rights under, or owe each other any further duties, obligations and responsibilities under the Contract from and after the Termination Date.

2. Payment by KCHA to Meridian. KCHA shall pay Eight Hundred and Fifty Thousand Dollars and No Cents (\$850,000.00) (the "Termination Payment") to Meridian on or before August 31, 2023, as partial consideration of the termination of the Contract.

3. Provision of Employee Information. On or before July 31, 2023, Meridian shall use its best efforts to obtain consent from each of its employees to provide to KCHA a single dollar amount that accurately reflects the employee's total annual compensation from Meridian, which will consist of the following information regarding each of the employees of Meridian that are providing services to KCHA (collectively, the "Amounts");

- a. Base salary;
- b. Bonus;
- c. Salary deferred for retirement; and
- d. Car allowance (excluded except for CEO position).

Upon obtaining consent from an employee, no later than July 31, 2023 Meridian shall provide the Amounts to KCHA on a per-employee basis and include the identity of the employee. Meridian is under no obligation to provide the Amounts related to specific employees to KCHA where the individual employee does not provide their consent for Meridian to do so.

4. Continuation of Services until Termination Date.

4.1. Generally. Meridian shall continue to provide services to KCHA as required by the Contract until the Termination Date with the exceptions described in this Section 4.

4.2. Vacant Positions. If any of the staff positions that are filled by Meridian employees become vacant after the Effective Date, Meridian shall not fill those vacant positions; except, however, if Scott Thygerson, Chief Executive Officer of KCHA, vacates his position, for whatever reason, Meridian shall work with KCHA to employ a new Chief Executive Officer.

4.3. Adjustment to Management Fee. If vacant positions remain unfilled pursuant to Section 4.2, the Management Fee (as defined in the Contract) shall be reduced as provided in Section 6.1.3, "Fiscal Provisions," of the Contract. For clarity, any such vacancies in Meridian staffed positions shall not result in a reduction of the Termination Payment or Operation Fee (as provided for in the Contract).

5. Waiver of Section 40, "Termination," of the Contract. The parties acknowledge, understand and agree that the termination of the Contract contemplated under this Agreement would be subject to Section 40, "Termination," of the Contract. The parties hereby waive their respective rights under Section 40 of the Contract. Notwithstanding the foregoing sentence, Section 41, "Effect of Termination," of the Contract shall remain in full force and effect except as superseded by this Agreement. Meridian shall comply with the termination provisions of the Business Associate Agreement. KCHA expressly acknowledges that, as of the Effective Date, KCHA has no actual knowledge of any obligations, debts or liabilities owed by Meridian to KCHA that have previously accrued and remain to be performed upon the Effective Date, as referenced in Paragraph 41.1 of Section 41 of the Contract; except, however, as provided under Section 4. For the purposes of this Section 5, "actual knowledge" means the actual knowledge of Russell E. Bigler and Karen S. Barnes of a specific obligation, debt, liability or claim against Meridian as of the Effective Date.

6. General Release; Waiver of Civil Code Section 1542.

6.1. General Release. With the exception of any covenants, representations or obligations under this Agreement and except for any indemnity obligations that KCHA owes to Meridian under the Contract, Meridian agrees to release, remise and forever discharge the KCHA and its administrators, agents, attorneys, beneficiaries, conservators, custodians, directors, employees, executors, governors, guardians, heirs, independent contractors, joint venturers, managers, members, officers, partners, predecessors, representatives, servants, stockholders, successors, trustees and all others acting for, under, or in concert with it, past, present, and future, of and from any and all past, present and future accounts, actions, agreements, causes of action, claims, costs or expenses (including, but not limited to,

attorneys' fees and disbursements), damages, debts, demands, liabilities, losses, obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, tort, or other theories of recovery provided for by the common or statutory law, ascertained or unascertained, known or unknown, patent or latent, suspected or claimed, arising out of or related in any way to the Contract.

6.2. General Release. With the exception of any covenants, representations or obligations under this Agreement and except for any indemnity obligations that Meridian owes to KCHA under the Contract, KCHA agrees to release, remise and forever discharge Meridian and its administrators, agents, attorneys, beneficiaries, conservators, custodians, directors, employees, executors, governors, guardians, heirs, independent contractors, joint venturers, managers, members, officers, partners, predecessors, representatives, servants, stockholders, successors, trustees and all others acting for, under, or in concert with it, past, present, and future, of and from any and all past, present and future accounts, actions, agreements, causes of action, claims, costs or expenses (including, but not limited to, attorneys' fees and disbursements), damages, debts, demands, liabilities, losses, obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, tort, or other theories of recovery provided for by the common or statutory law, ascertained or unascertained, known or unknown, patent or latent, suspected or claimed, arising out of or related in any way to the Contract.

6.3. Mutual Waiver of Civil Code Section 1542. Each party certifies to the other party that it has read and understands California Civil Code Section 1542, which states as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The parties also understand and acknowledge the significance and consequence of a waiver of California Civil Code Section 1542 and that said waiver applies only and solely to the matters released under Sections 6.1 and 6.2. With respect to this Agreement, the provisions of California Civil Code Section 1542, if in any way applicable, as well as the provisions of all comparable, equivalent, or similar principles of the common or statutory law, are hereby voluntarily waived by said party, who also acknowledges that this waiver is an essential and material term and condition of this Agreement.

7. Warranties of the Parties. Each party understands, acknowledges, agrees, represents and warrants to the other parties as follows: (i) that no promises, inducements, or other agreements not expressly contained herein have been made by any party; (ii) that it is empowered to execute this Agreement; (iii) each party covenants, represents and warrants to the other party that its agent and representative executing this Agreement on its behalf is fully authorized and is acting, and at all times acted, on its behalf in negotiating and executing this Agreement and that no consents are required from any other party for it to enter into this Agreement and it is not otherwise restricted or prohibited from entering into this Agreement; (iv) that its execution of this Agreement is free and voluntary; and (v) that it fully understands that if facts relating to the this Agreement, including disputed issues of law, are hereafter found to be different from facts now believed by him to be true, it has accepted and assumed the risk of such error and agrees that this Agreement shall remain effective notwithstanding his discovery of such error.

8. Attorneys' Fees and Costs. In the event of any arbitration or litigation between the parties in connection with the interpretation, performance or enforcement of this Agreement, the prevailing party in such litigation shall be entitled, in addition to equitable relief or damages or both or other relief, to be reimbursed by the non-prevailing party for all costs and expenses of the litigation, including, without limitation, arbitration fees, court costs, expert witness fees, investigation costs and such attorneys' fees and

disbursements, incurred therein by such prevailing party or parties and if such prevailing party or parties shall recover judgment in any such action or proceedings, such costs, expenses and attorneys' fees may be included in and as a part of such judgment. The prevailing party or parties shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. If no costs of suit are awarded, the arbitrator(s) or court, as applicable, shall determine the prevailing party. For the purpose of this Section 8, the term "attorneys' fees and disbursements" shall include, but not be limited to, fees and disbursements incurred in connection with the following: (i) contempt proceedings; (ii) discovery; (iii) any motion, proceeding or other activity of any kind or nature in connection with a bankruptcy proceeding or case arising out, concerning or related in any way to any petition under Title 11 of the United States Code, as the same shall be in effect from time to time, or any similar law; (iv) garnishment, levy, and debtor and third party examinations; and (v) post judgment motions, proceedings or activity of any kind or nature, including, without limitation, any activity taken to collect or enforce any judgment.

9. Waiver. No waiver of any default or failure or delay to exercise any right or remedy by a party shall operate as a waiver of any other default or of the same default in the future or as a waiver of any right or remedy with respect to the same or any other occurrence.

10. Further Assurances. Each party shall execute and deliver any and all additional papers, documents or other assurances and shall perform any further acts which may be reasonably necessary to carry out the intent of the parties and this Agreement.

11. Notices. All notices, demands, or other communications that either party desires or is required or permitted to give or make to the other party under or pursuant to this Agreement (collectively referred to as "notices") shall be made or given in writing and shall either be: (i) personally served; (ii) sent by registered or certified mail, postage prepaid; (iii) sent by e-mail; or (iv) sent by a nationally recognized overnight delivery service or courier (such as Federal Express). All notices shall be addressed or e-mailed to or personally served on the parties as follows:

| KCHA | MERIDIAN |
|---|--|
| Karen S. Barnes, Esq. Vice President and General Counsel KERN COUNTY HOSPITAL AUTHORITY 1700 Mount Vernon Avenue Bakersfield, California 93306 Telephone No.: 661-862-8190 E-Mail: karen.barnes@kernmedical.com | Mr. Russell V. Judd President and Secretary MERIDIAN HEALTHCARE PARTNERS, INC. 1441 East 1440 South Provo, Utah 84606 Telephone No. 661-444-2329 E-Mail: russelljudd@yahoo.com |

Notices given by a party pursuant to the alternative methods described in this Section 11 shall be deemed to have been delivered to and received by the other party at the following times: (a) for notices personally served, on the date of hand delivery to the other party or its duly authorized employee, representative, or agent; (b) for notices given by registered or certified mail, on the date shown on the return receipt as having been delivered to and received by the other party or parties; (c) for notices given by e-mail, on the date the notice is e-mailed to the other party or parties; provided, however, that notices given by e-mail shall not be effective unless a duplicate copy of such e-mailed notice is promptly given by first-class mail, postage prepaid, and addressed as provided above; provided further, however, any notice given by e-mail shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a nonbusiness day; or (d) for notices delivered by overnight courier, on the next business day after same has been deposited with the courier as evidenced by the receipt provided by such courier to the party giving

notice. Each party shall make an ordinary, good faith effort to ensure that it shall accept or receive notices that are given in accordance with this Section 11, and that any person to be given notice actually receives such notice. A party may change or supplement its designated agent, address, or fax number given above, or designate additional agents, addresses or e-mail addresses for notice purposes, by giving notice to the other party in the manner set forth in this Section 11, provided that any such address change shall not be effective until five (5) days after the notice is delivered or received by the other party.

12. Binding Effect; No Third Party Beneficiary. This Agreement shall inure to and for the benefit of and be binding upon each party's respective parent, subsidiary or affiliated organizations, administrators, agents, attorneys, beneficiaries, conservators, custodians, directors, employees, executors, guardians, heirs, independent contractors, joint venturers, managers, members, officers, partners, predecessors, representatives, servants, stockholders, successors, trustees and all others acting for, under, or in concert with it, including associations, corporations, limited liability companies, and general or limited partnerships, past, present, and future. This Agreement is made for the sole benefit of the parties and their respective successors and assigns and no other person or persons shall have any right of action hereon.

13. Entire Agreement. This Agreement contains the entire agreement between the parties and constitutes an integration of the entire agreement, contract, promise and understandings of the parties. All prior agreements, conditions, contracts, promises, representations, understandings, or warranties, whether oral or written, express or implied, concerning the subject matter of this Agreement are expressly superseded hereby and have no further force or effect, except for the Agreement.

14. Modification. This Agreement may not be altered, amended, or modified in any respect, except by a writing duly executed by all the parties.

15. Governing Law; Venue. This Agreement shall be construed, enforced, governed by, interpreted and performed pursuant to the internal laws, and not the law of conflicts, of the State of California applicable to agreements, contracts and understandings made and to be performed in such state. The parties also agree that this Agreement is made and to be performed in Kern County, California, and therefore that the only proper venue for any litigation shall be the Kern County Superior Court.

16. Construction; Computation of Time. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, strictly neither for nor against any party, and without implying a presumption that the terms thereof shall be more strictly construed against the person who drafted the document, it being acknowledged and agreed that representatives of both parties have participated in the preparation hereof. In this Agreement, the masculine, feminine or neuter gender, the singular or plural number shall be deemed to include the other whenever the context so requires, and "shall" and "agrees" are mandatory, and "may" is permissive. The captions appearing at the commencement of the provisions of this Agreement are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the provision at the head of which it appears, the provision, and not the caption, shall control and govern in the construction of this Agreement. Each of the recitals is incorporated in this Agreement by reference as if fully set forth in this Agreement at length, and is relied upon by the parties in agreeing to the provisions of this Agreement. The parties acknowledge, understand and agree that their respective agents and representatives executing this Agreement on behalf of each of the parties are learned and conversant in the English language, and that the English language shall control the construction, enforcement, governance, interpretation and performance of this Agreement. The time in which any act under this Agreement is to be done shall be computed by excluding the first day and including the last day. If the last day of any time period shall fall on a Saturday, Sunday or a federal and/or State of California bank holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or a federal and/or State of California bank holiday. The word "day" shall mean a "calendar" day and the phrase "business day" shall mean those

days that are neither a Saturday, a Sunday nor a federal and/or State of California bank holiday.

17. Confidentiality of Agreement. Parties expressly understand and agree that this Agreement, and its contents (including, without limitation, the fact of payment and the amounts to be paid hereunder) shall remain CONFIDENTIAL and shall not be disclosed to any third party whatsoever, except the parties' counsel, accountants, financial advisors, insurance providers, tax professionals retained by them, any applicable federal, state or local governmental taxing or regulatory authority, and the parties' management, officers and Board of Directors/Governors, and except as required by law or order of court under proper jurisdiction. Any person identified in the preceding sentence to whom information concerning this Agreement is disclosed is bound by this confidentiality provision and the disclosing party shall be liable for any breaches of confidentiality by persons to whom he/she/it has disclosed information about this Agreement in accordance with this Section 17.

18. Partial Invalidity. Sections 1 through 6 are material terms of this Agreement. However, notwithstanding the foregoing, if any clause, paragraph, phrase or sentence of this Agreement shall become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining clauses, paragraphs, phrases and sentences of this Agreement shall not be affected thereby and the parties shall negotiate an equitable adjustment of the affected provision with a view toward effecting the purpose of this Agreement.

19. Counterparts; Facsimile or .pdf Signatures. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed to be an original and to constitute the one and same agreement or contract. This Agreement may be signed and signatures transmitted by facsimile or .pdf and any such facsimile or .pdf copy shall be equivalent to a binding signed original for all purposes, each of which, when so executed, also shall be deemed to be an original and to constitute the one and same agreement or contract.

20. Time of the Essence. Time is of the essence under this Agreement.

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

[SIGNATURES ON THE NEXT PAGE; REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

22. Effectiveness. This Agreement shall become effective as of the Effective Date upon its execution and delivery by all the parties.

| KCHA | MERIDIAN |
|---|--|
| KERN COUNTY HOSPITAL AUTHORITY, a California local unit of government | MERIDIAN HEALTHCARE PARTNERS, INC., a California corporation |
| By: _____ RUSSELL E. BIGLER Its: Chairman | By: <u><i>Russell V. Judd</i></u> RUSSELL V. JUDD Its: President and Secretary |
| APPROVED AS TO FORM: | By: <u><i>Shawna Judd</i></u> SHAWNA JUDD |
| By: _____ KAREN S. BARNES Its: Vice President & General Counsel | Its: Director |



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

August 16, 2023

Subject: Kern County Hospital Authority Chief Financial Officer Report – June 2023

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Operating gain of \$274,081 for June is \$162,444 more than the June budget of \$111,637 and \$166,702 more than the \$107,379 average over the last three months
- EBIDA of \$1,916,488 for June is \$769,401 more than the June budget of \$1,147,088 and \$217,146 more than the \$1,699,342 average over the last three months
- Average Daily Census of 162 for June is 19 more than the June budget of 143 and 7 more than the 155 average over the last three months
- Admissions of 768 for June are 187 less than the June budget of 955 and 27 more than the 741 average over the last three months
- Total Surgeries of 532 for June are 80 more than the June budget of 452 and 32 more than the 500 average over the last three months
- Clinic Visits of 17,683 for June are 3,293 more than the June budget of 14,390 and 176 less than the 17,859 average over the last three months. The total includes 11 COVID-19 vaccination visits

The following items have budget variances for the month of June 2023:

Patient Revenue:

For gross patient revenue there is a 5% favorable budget variance for the month due to strong patient census levels. On a year-to-date basis, gross patient revenue is only about 1% under budget and only about 0.4% less than the prior year-to-date amount.

Indigent Funding Revenue:

Indigent funding has a favorable budget variance for the month due to the recognition additional Quality Improvement Program (QIP) funding. The favorable change in estimate is based on achieving 100% of the quality goals per the current performance report for this program. In addition to the additional QIP funding, on a year-to-date basis the favorable budget variance is due to the recognition of additional Medi-Cal Graduate Medical Education (GME) funding. This program started in FY 2017 and has been paid at pre-Affordable Care Act (ACA) rates. Therefore, the payments that hospitals have been receiving for the GME program have not been calculated using the current Federal Medical Assistance Percentage (FMAP) rate which is more favorable. The Centers for Medicare and Medicaid Services (CMS) recently approved the proposed methodology to apply the current FMAP rate to the GME program retroactively back to FY 2017 through FY 2022 and pay hospitals for the difference.

Other Operating Revenue:

Kern Medical operated at budget for other operating revenue for the month of June. On a year-to-date basis, revenue for items such as medical education funding, grants, and Proposition 56 are received quarterly or otherwise periodically. Therefore, actual monthly revenue compared to the budget will fluctuate throughout the year.

Other Non-Operating Revenue:

Other non-operating revenue has an unfavorable budget variance for the month because federal and state COVID-19 related funding is budgeted evenly throughout FY 2023 as other non-operating revenue; however, COVID-19 funding is not received consistently. On a year-to-date basis, other non-operating revenue has a favorable budget variance due to the receipt of \$1.7 million of COVID-19 employee retention funds in April. The COVID-19 retention bonuses were paid out to employees in April and included in salaries expense.

Nurse Registry Expense:

Nurse registry expense is under budget for the month and on a year-to-date basis. Kern Medical has substantially decreased its usage of contract nurse services. In addition, the hourly rates charged by the staffing agencies that provide registry nurse services are significantly lower than at various COVID-related peaks. During the past two years, staffing agencies were charging higher than average costs per hour due to nurse shortages during the pandemic. For FY 2023 nurse registry expense is 8% under budget. Year-to-date, Kern Medical has spent \$21.8 million less for nurse registry than in prior year. Kern Medical plans to continue its need for registry services as appropriate to staff for patient needs.

Medical Fees:

Medical fees are over budget for the month and on a year-to-date basis because of an increase in coverage for trauma services provided by the Acute Care Medical Surgery Group. The monthly fees for Regional Anesthesia Associates have also increased. In addition, the budget for this line item was reduced for FY 2023 with the expectation of less usage of contract physician services.

Other Professional Fees:

Other professional fees are over budget for the month and on a year-to-date basis in part because of monthly per-member-per-month (PMPM) payments for Universal Healthcare's Enhanced Care Management (ECM) services. These fees are offset by additional gross patient revenue for ECM services billed by Kern Medical. In addition, other professional fees were incurred for Microsoft affiliate Finchloom. The IT department engaged Finchloom to conduct a cyber-security assessment. The consulting company Healthfuse has also been engaged to provide revenue cycle consulting services. Legal expenses are over budget for the month and on a year-to-date basis. Also, contract labor expense for the Information Systems department is higher than average for the month and on a year-to-date basis.

Supplies Expense:

Supplies expense is under budget for the month and on a year-to-date basis because of lower-than-average costs for pharmaceuticals and for general medical supplies.

Purchased Services:

Purchased services are over budget for the month primarily because of higher than average out-of-network costs for health care services provided by outside providers for Kern Medical patients. On a year-to-date basis, purchased services are over budget mainly because of additional revenue cycle support services provided by Signature Performance and by Health Advocates. Health Advocates helps to qualify patients for Medi-Cal coverage. However, Health Advocates' expenses are offset by additional Medi-Cal patient revenue. In addition, computer software maintenance fees have increased compared to prior year. There was also an increase in security costs.

Other Expenses:

Other expenses are under budget for the month due to a change in the treatment of accounting for leases. GASB 87 was implemented in 2022 and requires leases to be set up as assets at fair market value and amortized over time. Corresponding right-of-use liabilities are also set up for leases with applicable interest expense accrued. The net effect of the implementation of GASB 87 is minimal. The decrease in lease expense under the other expenses section of the income statement is offset by increases in amortization expense and in interest expense. On a year-to-date basis, in addition to the implementation of GASB 87 the unfavorable budget variance is primarily because of clinic lease expense, higher-than-average costs for repairs and maintenance, and for utilities.

Interest Expense:

Interest expense is over budget for the month because of the implementation GASB 87. Please see the other expenses section of this memo for an explanation of how leases are accounted for under GASB 87 and how it may affect interest expense. On a year-to-date basis, in addition to GASB 87 interest expense is over budget due to higher than anticipated certificate of participation (COP) bond interest.

Depreciation and Amortization Expense:

Depreciation and amortization expenses are over budget for the month and on a year-to-date basis because of the implementation of GASB 87. Please see the other expenses section of this memo for an explanation of how leases are accounted for under GASB 87 and how it may affect amortization expense.

Balance Sheet: Long-Term Liabilities

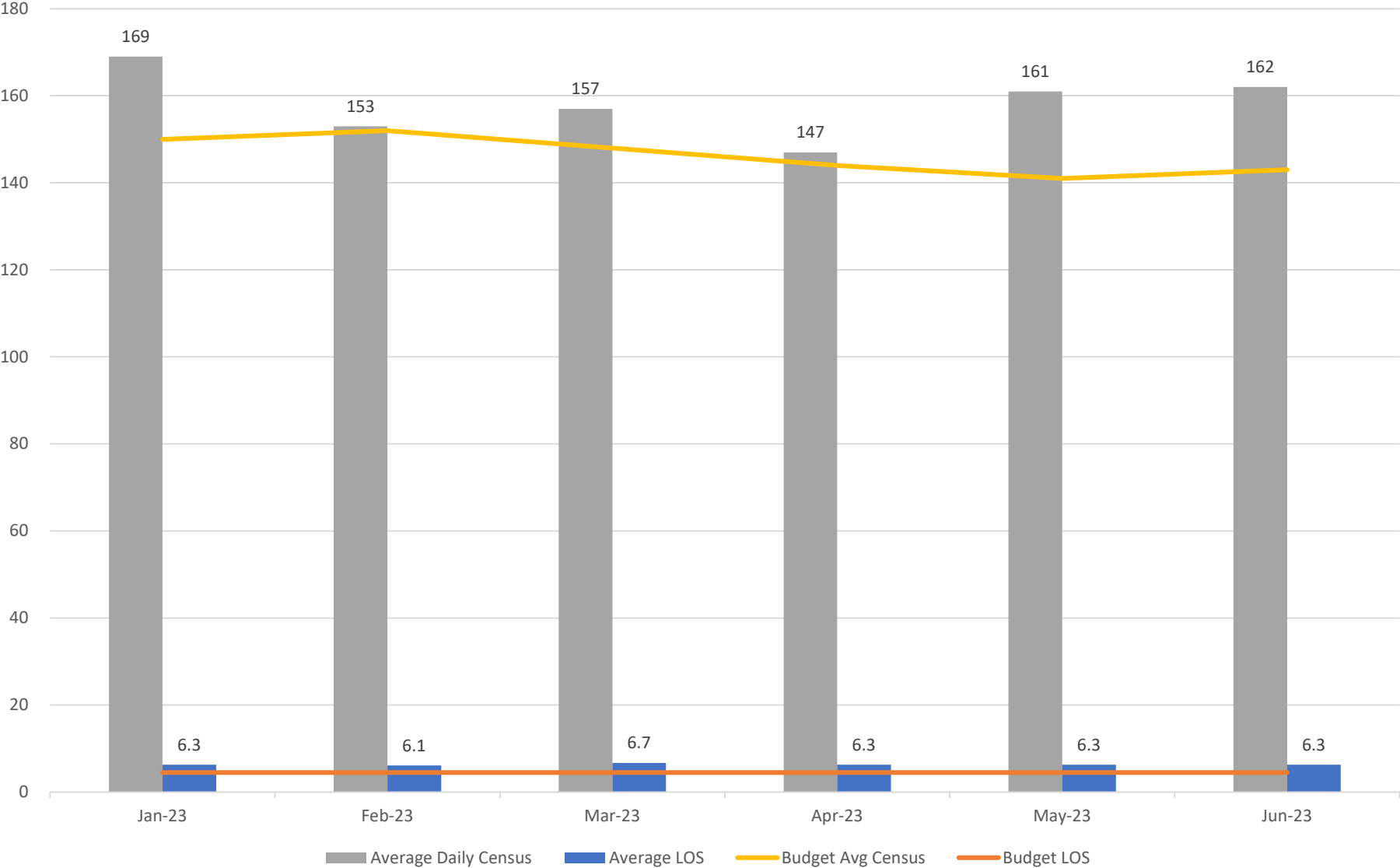
Kern Medical's FY 2022 financial audit was completed in February 2023 and the FY 2022 reporting period was closed. The resulting adjustments for long-term liabilities made after fiscal year-ended June 30, 2022 are now reflected in the monthly balance sheet reporting for FY 2023. Among the entries is a \$96.9 million favorable accounting adjustment for the unfunded pension obligation. The adjustment is supported by the year-end actuarial report received from KCERA that was based on market conditions at the time the report was compiled. This adjustment also has a favorable effect on retained earnings and the total fund balance. This accounting adjustment does not alter financial profitability or cash position.

In addition to the favorable change for the unfunded pension liability, other-long term liabilities reported for June 2023 total \$134,837,243, up from the prior year amount of \$64,286,919. The unfavorable change is due in large part to a \$49.1 million unfavorable increase in deferred inflows from the pension. This adjustment for deferred inflows is also supported by the KCERA actuarial report previously referenced. In addition, a separate actuarial report from Segal supports a \$5.6 million unfavorable adjustment for the other post-employment benefits (OPEB) liability. A \$5.2 million long-term liability was also added as part of the implementation of the new GASB 87 accounting treatment for leases. Please see the other expenses section of this memo for details about the implementation of GASB 87.

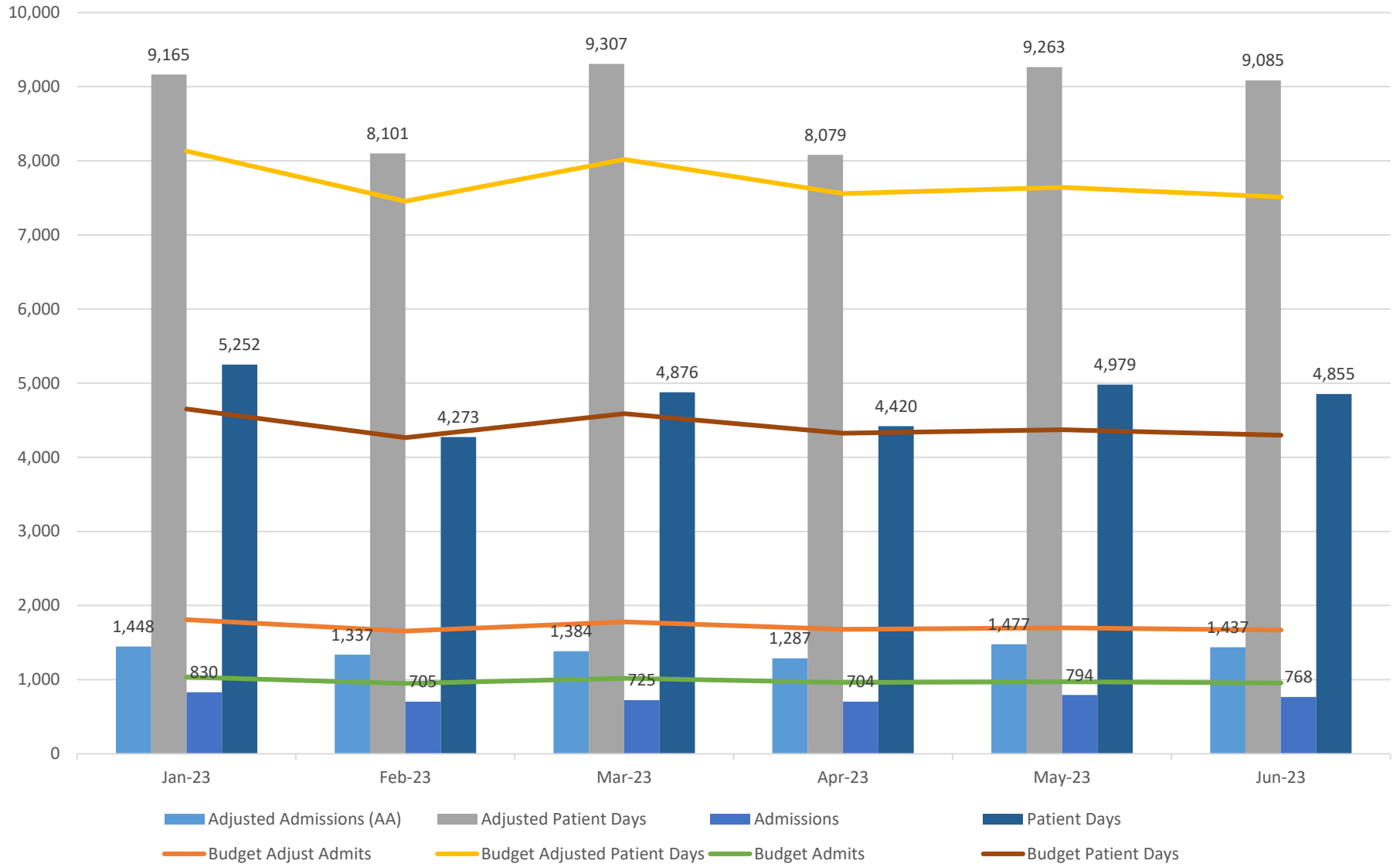


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – JUNE 2023**

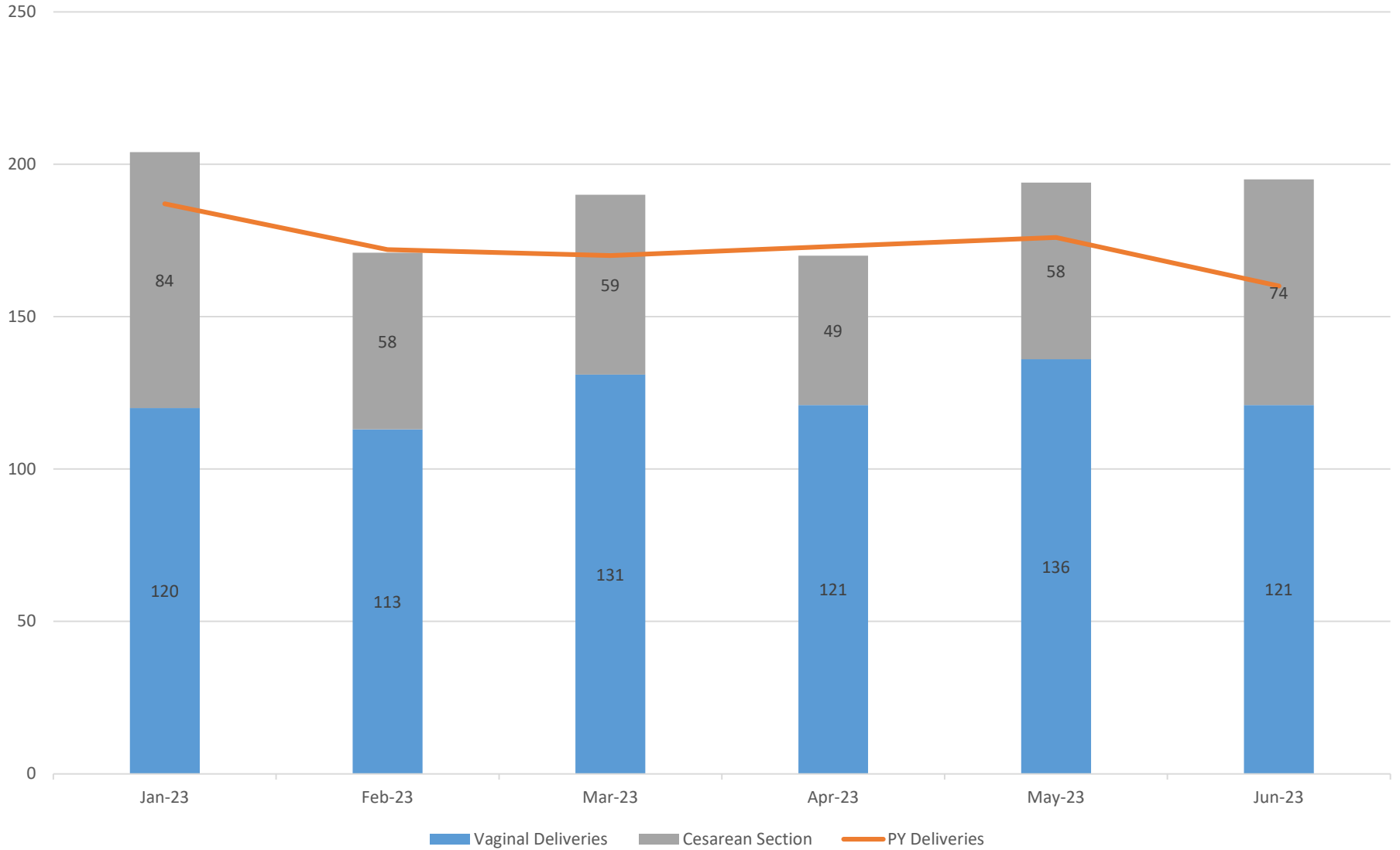
Census & ALOS



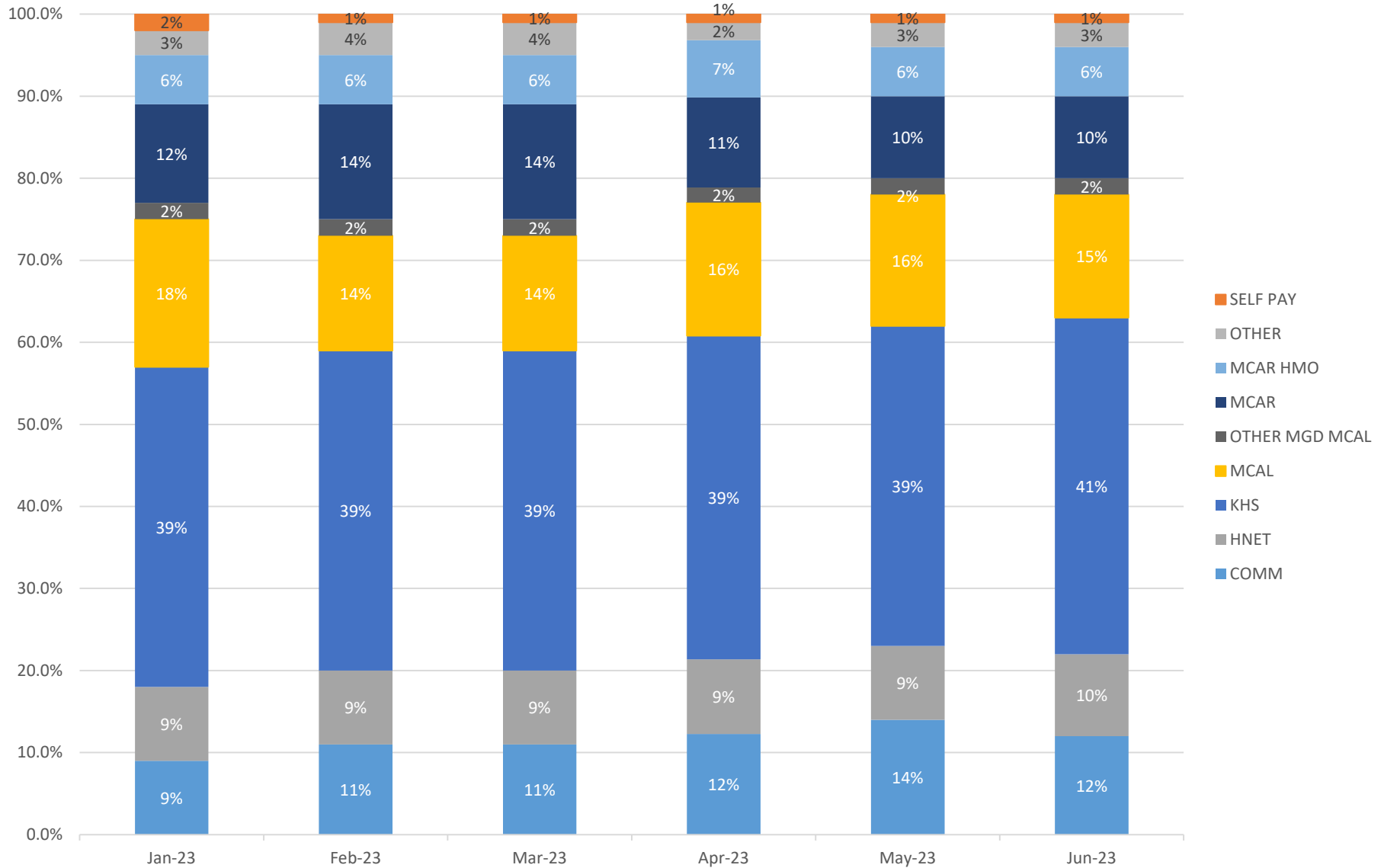
Hospital Volumes



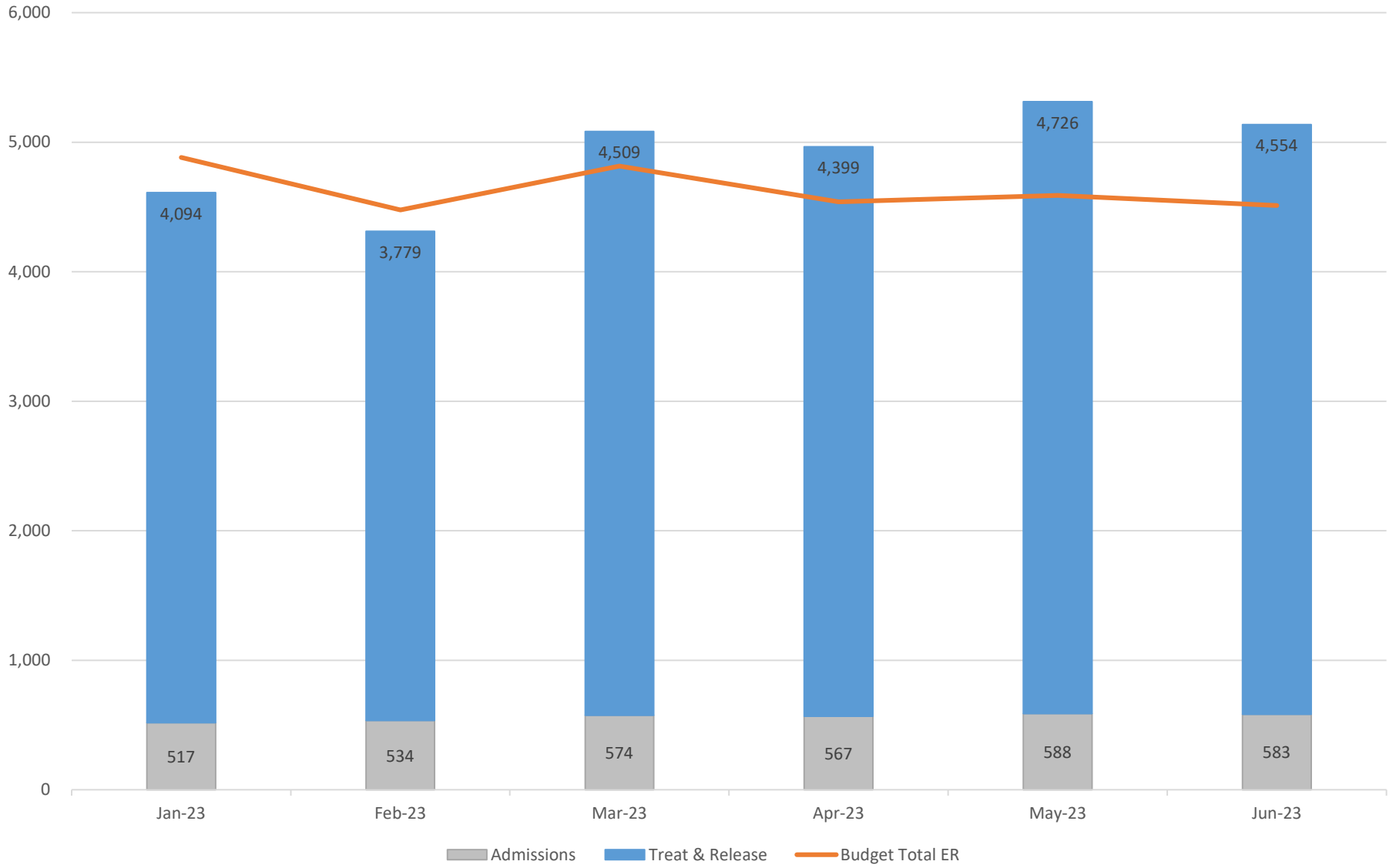
Deliveries



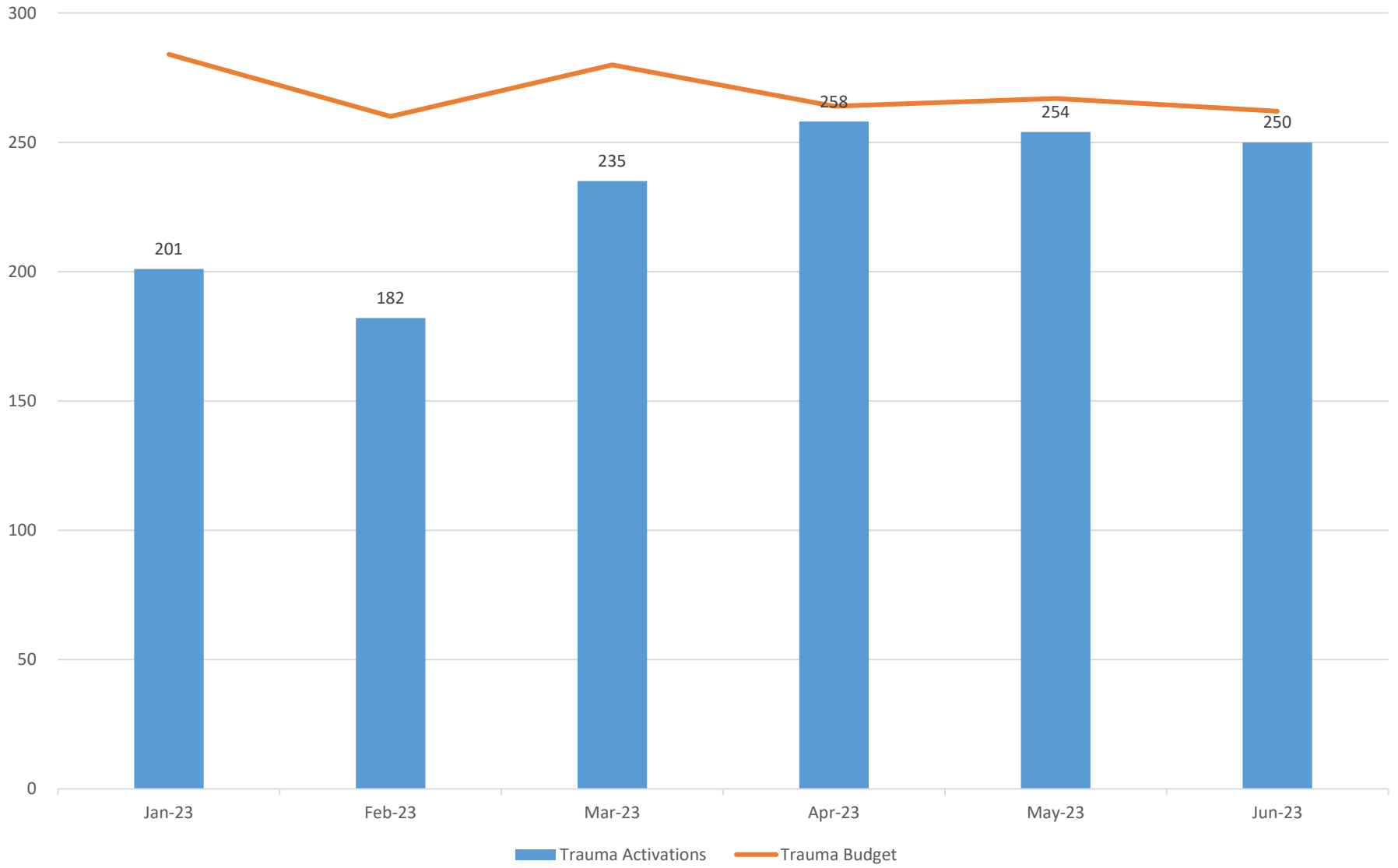
PAYER MIX



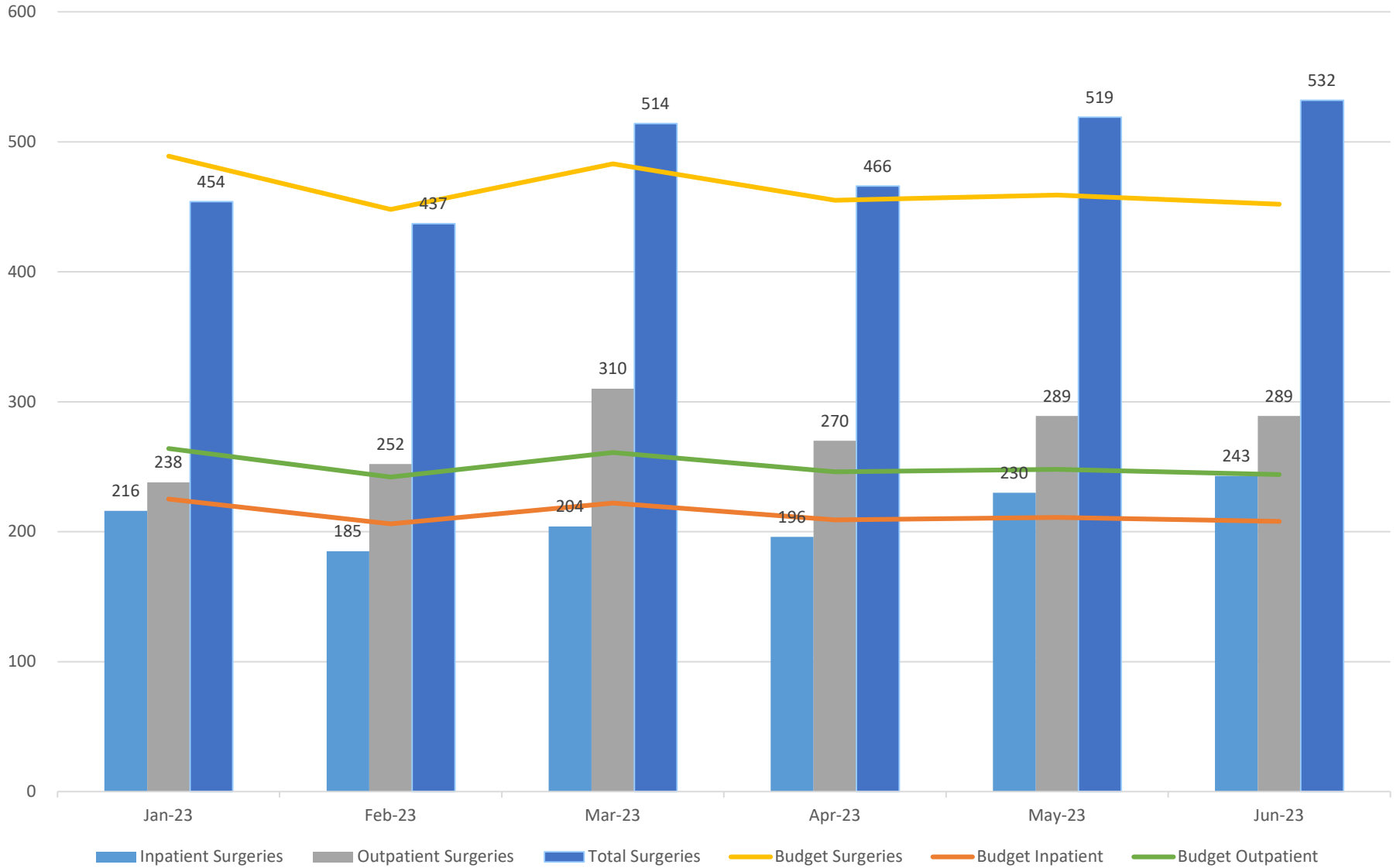
Emergency Room Volume



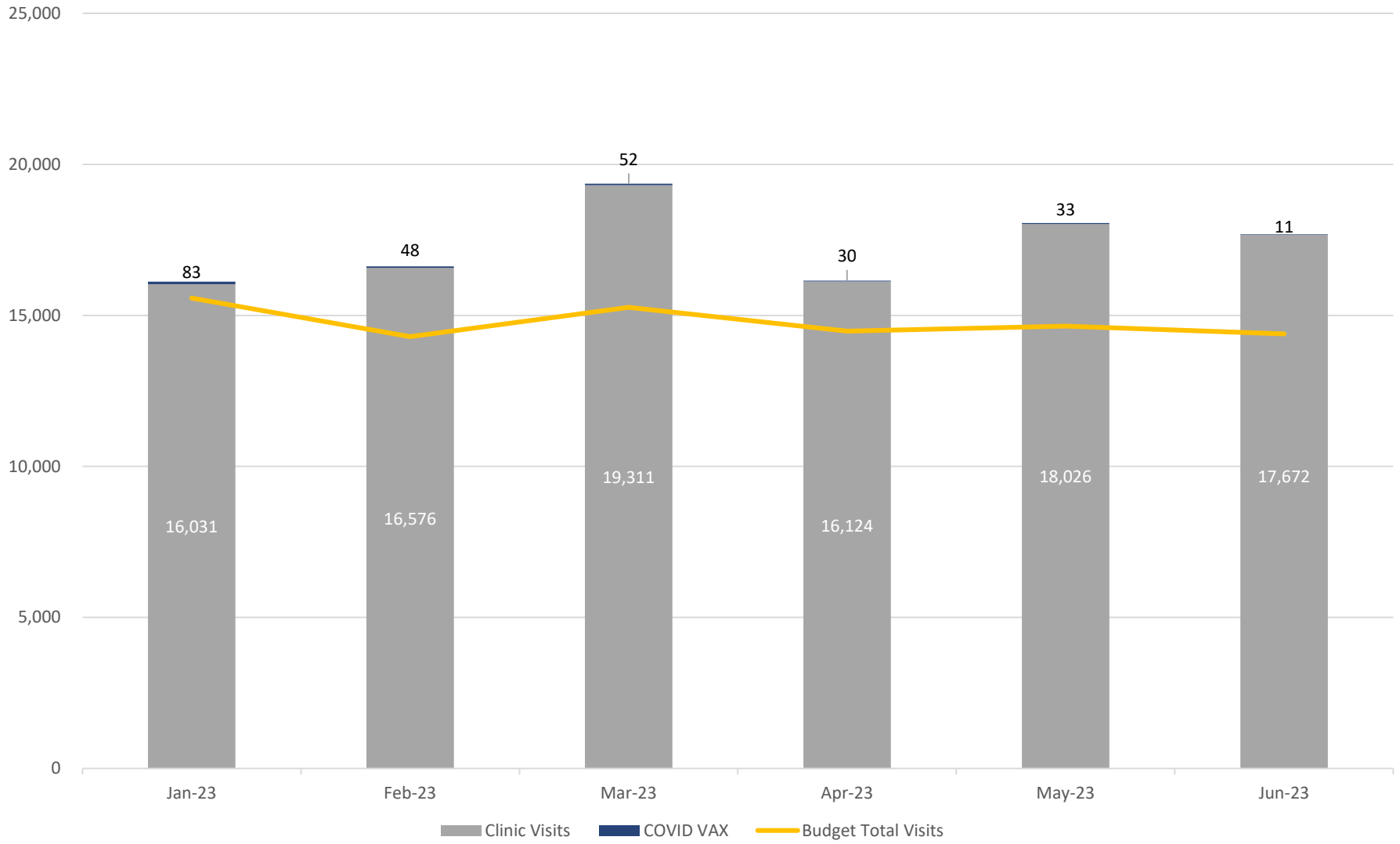
Trauma Activations



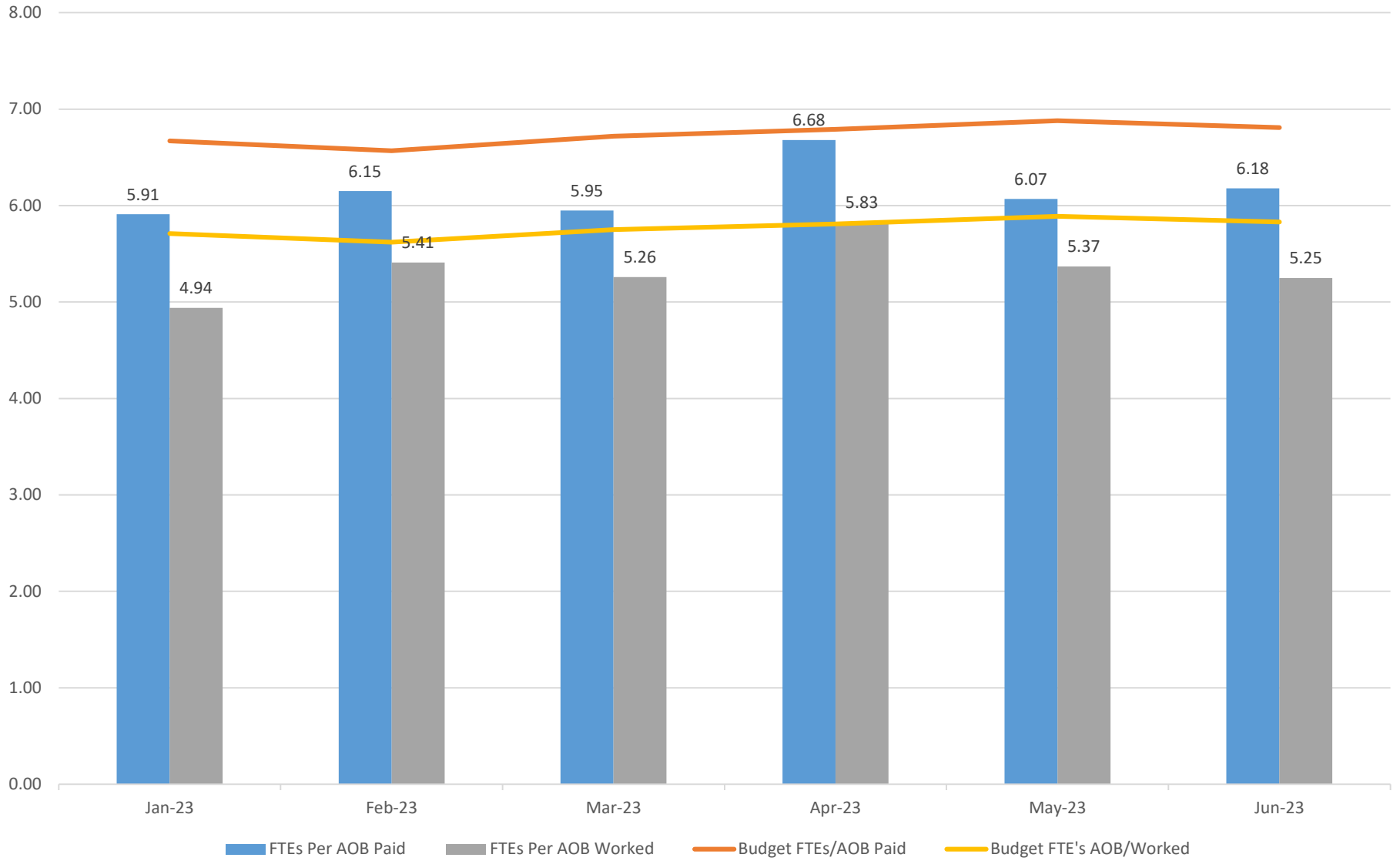
Surgical Volume



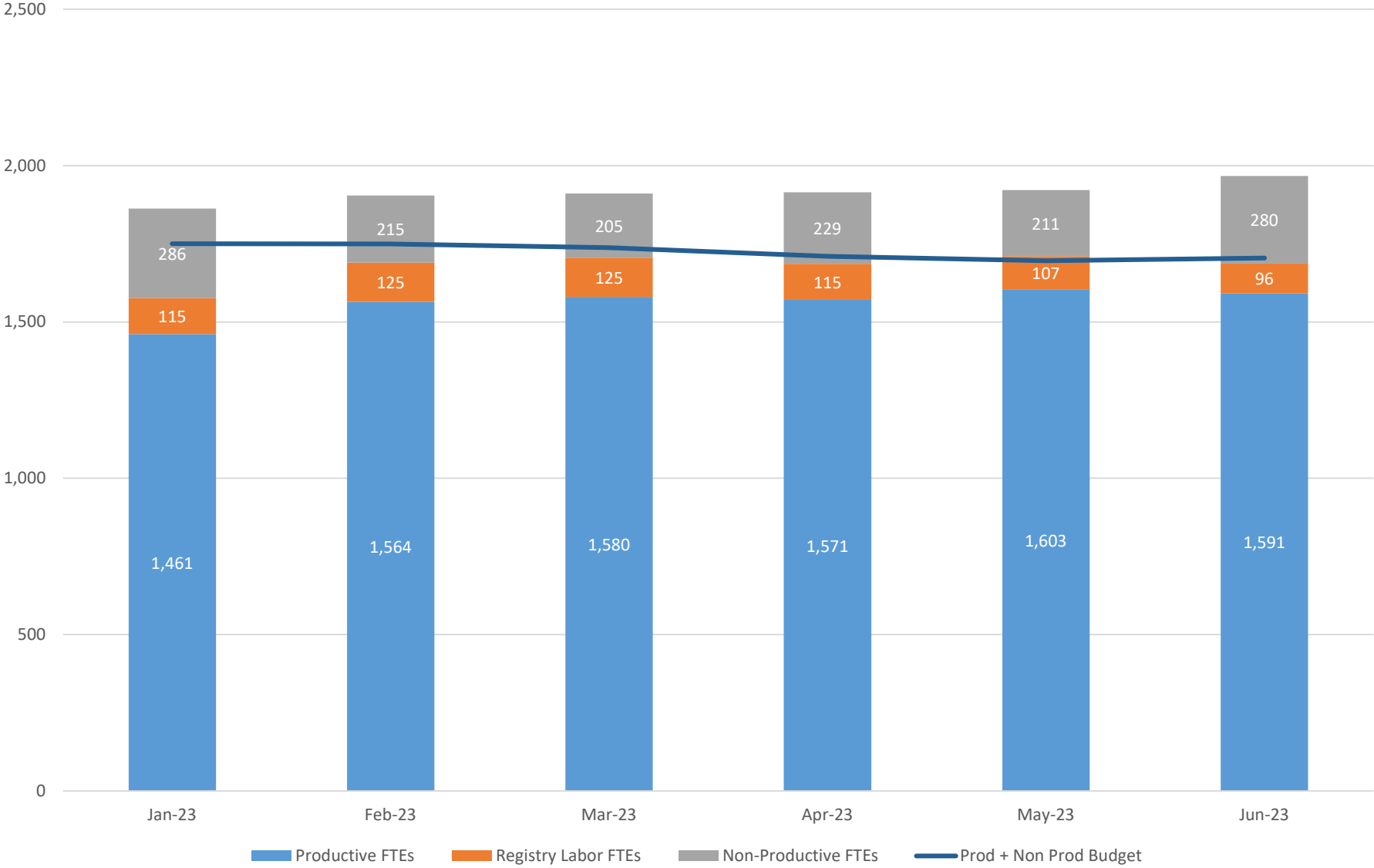
Clinic Visits

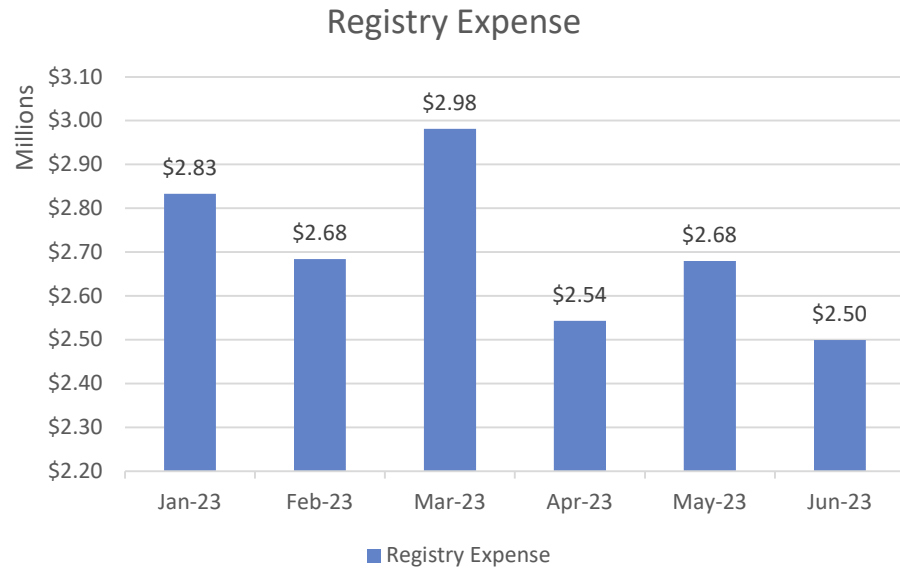
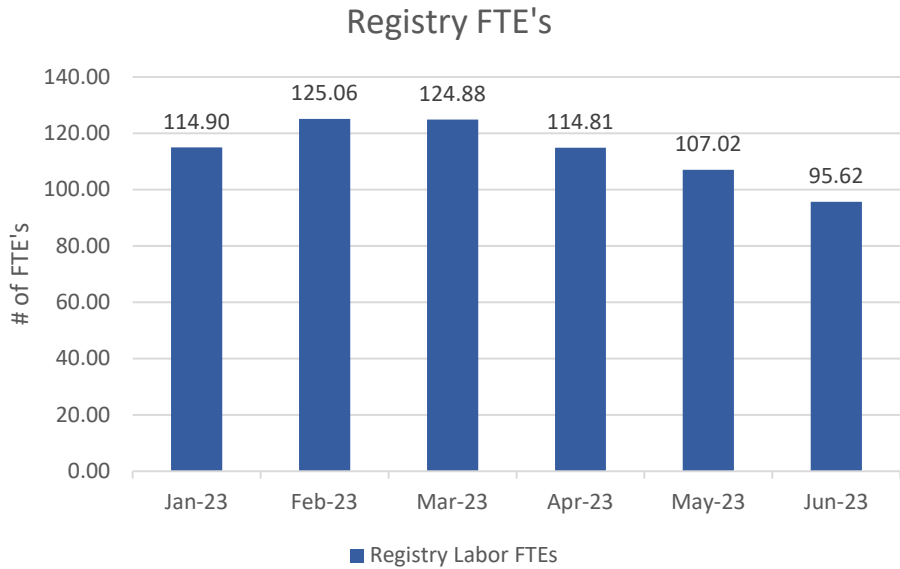


Labor Metrics

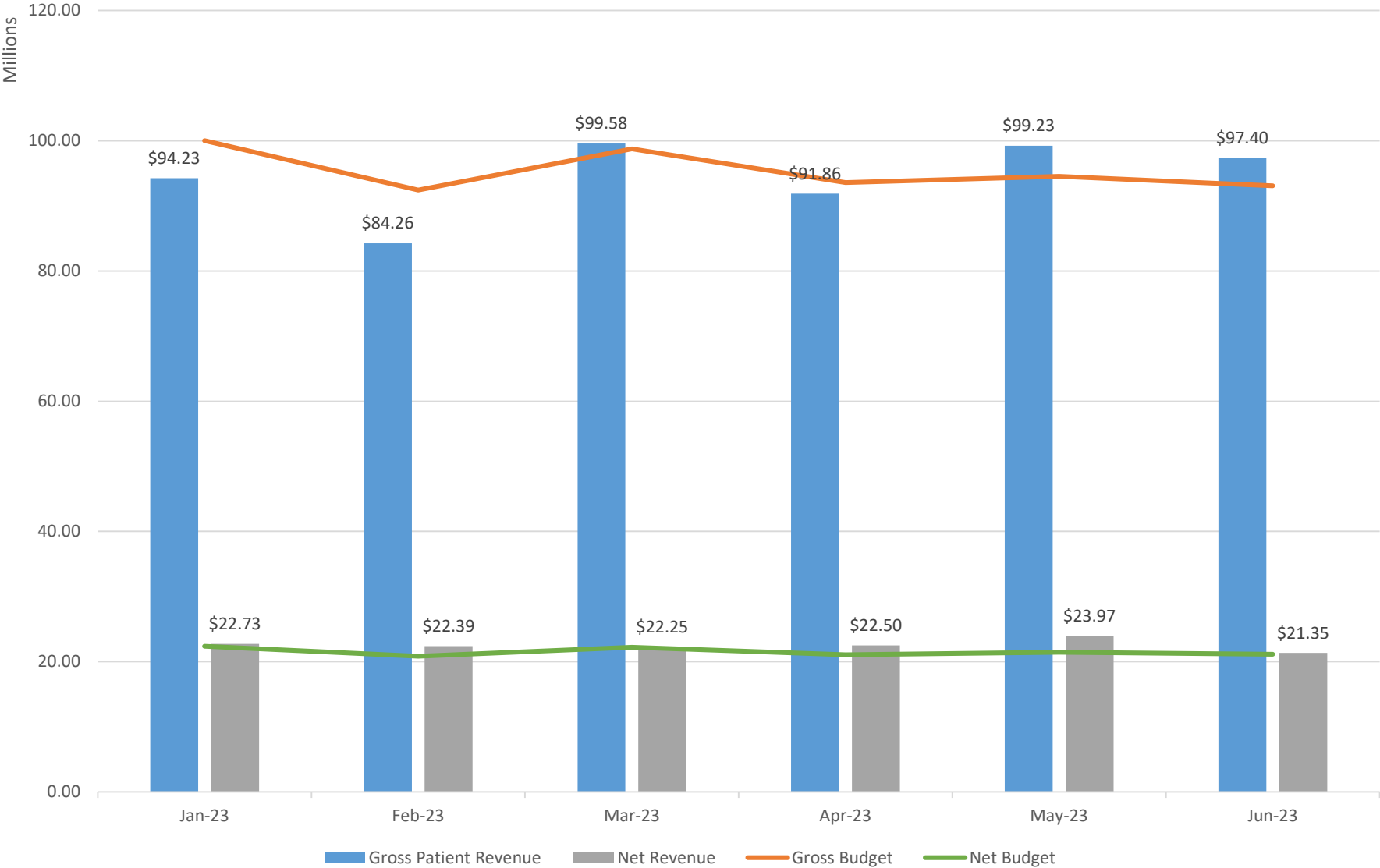


Productivity

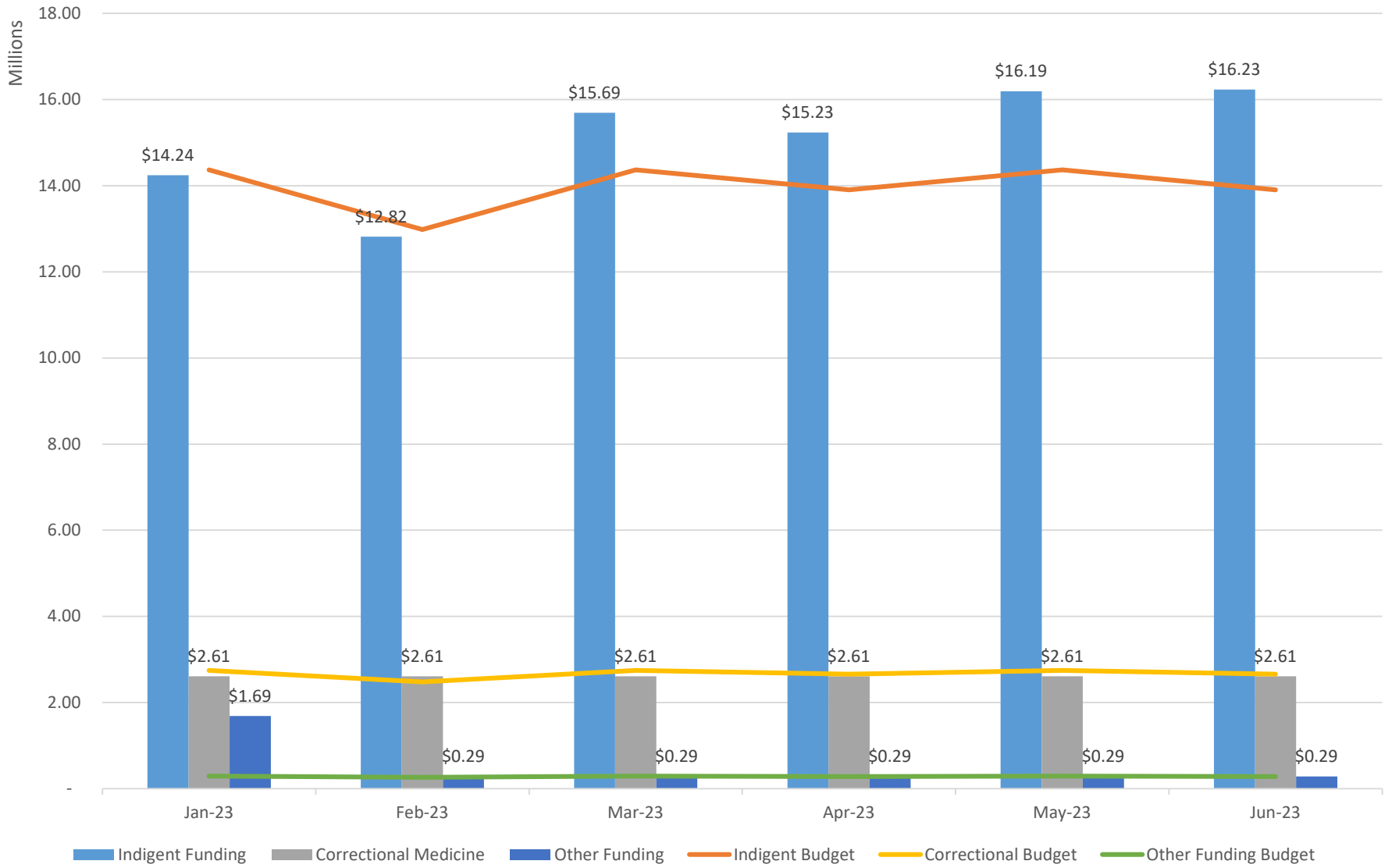




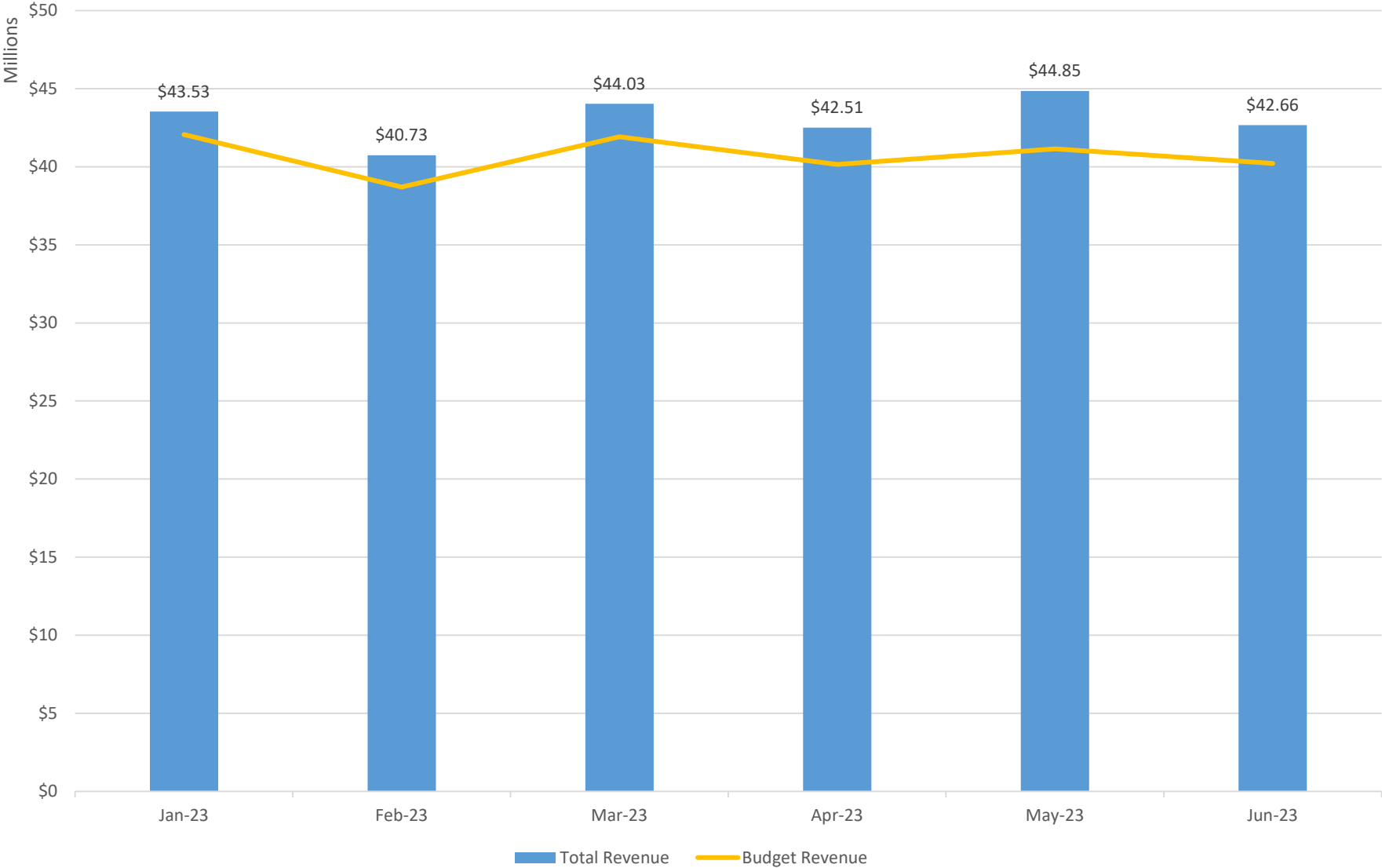
Patient Revenue



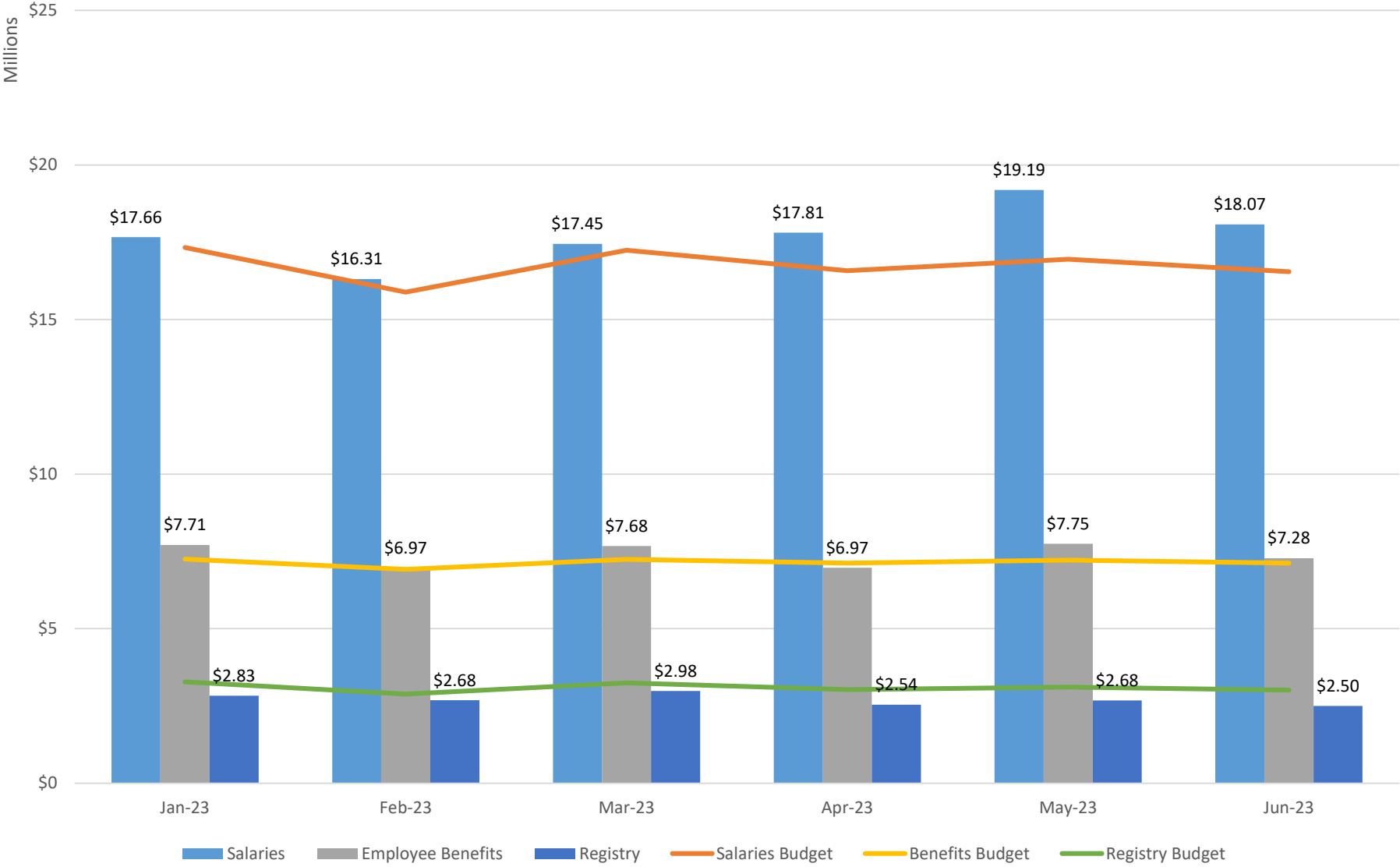
Indigent & Correctional Revenue



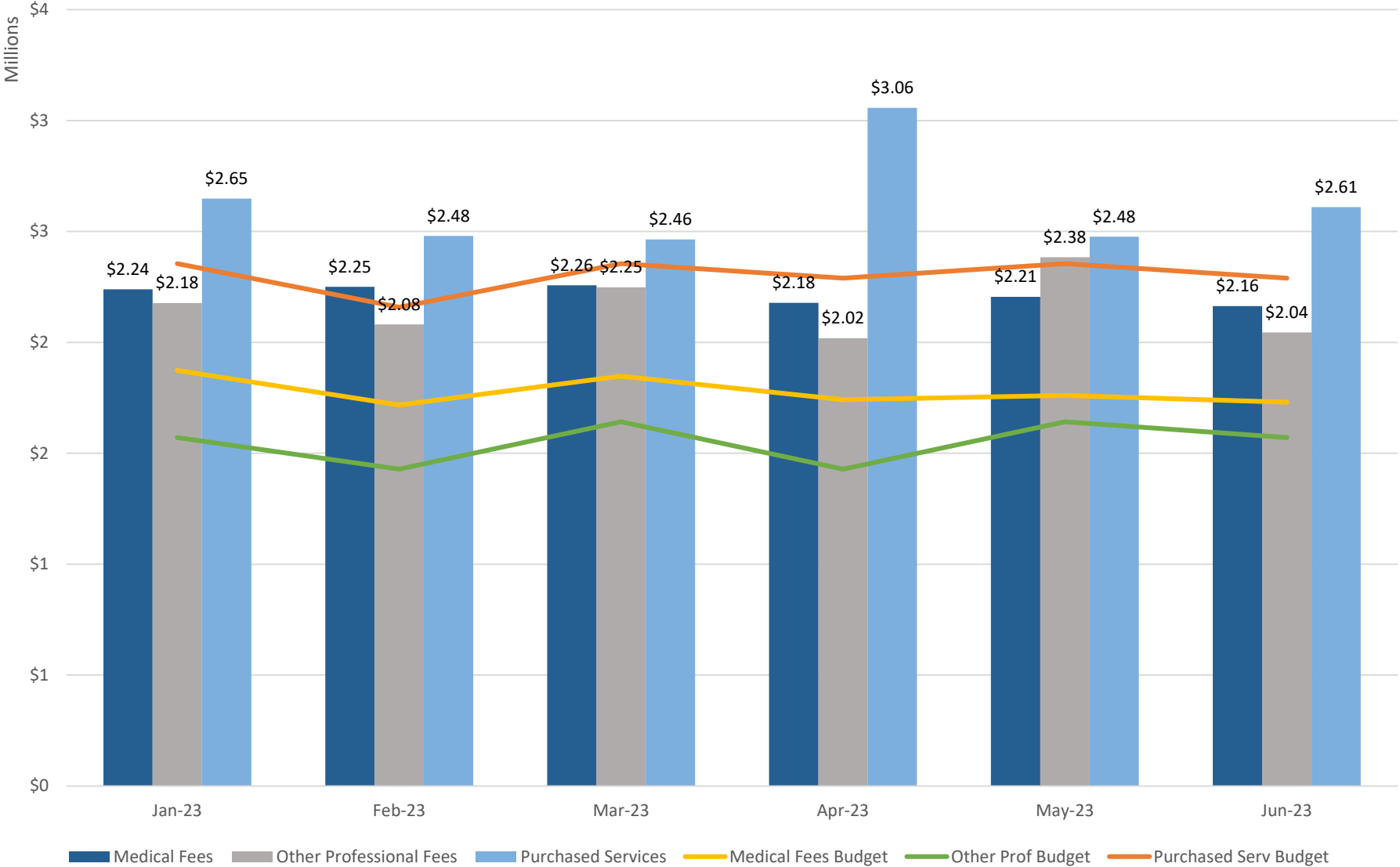
Total Revenue



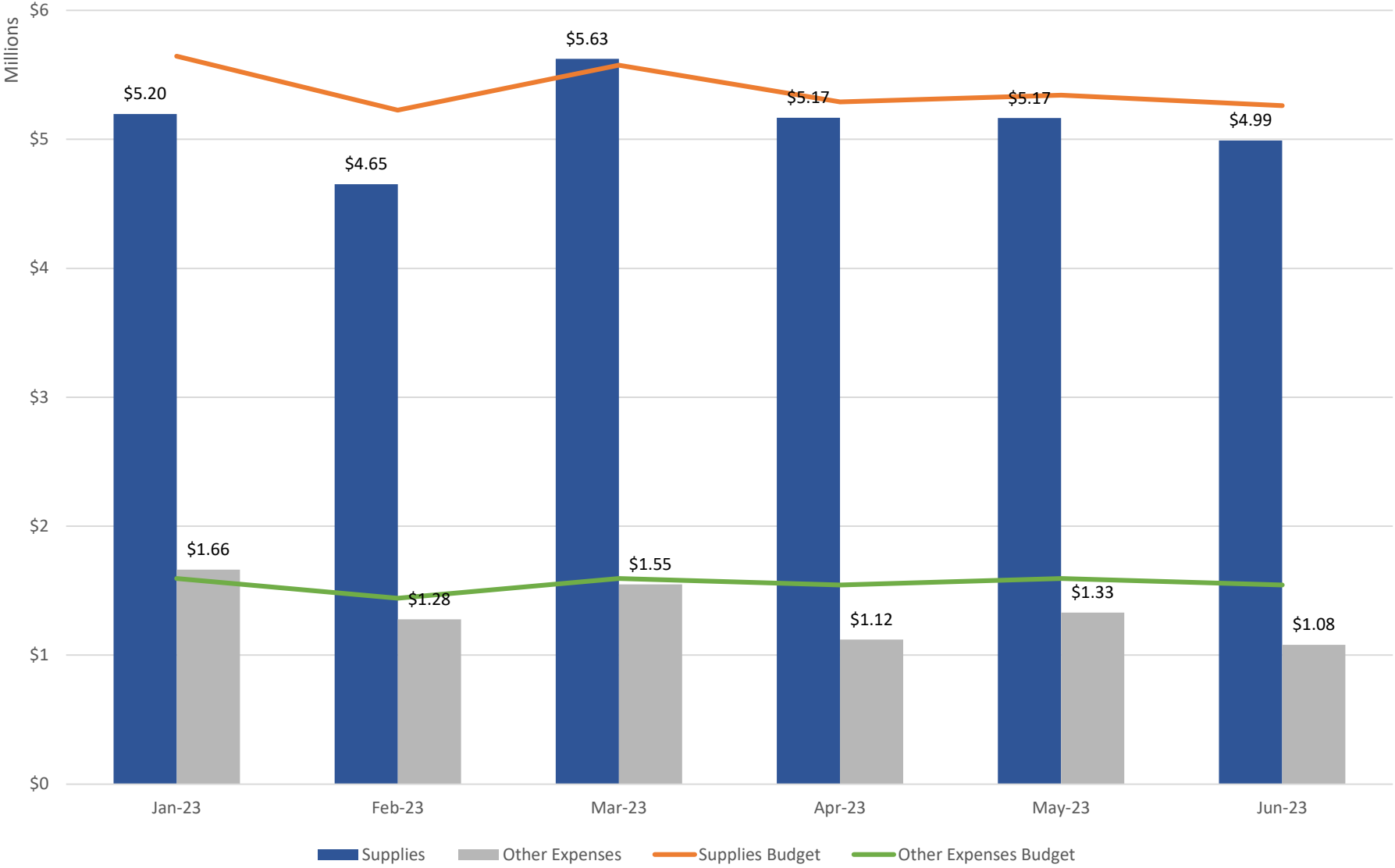
Expenses



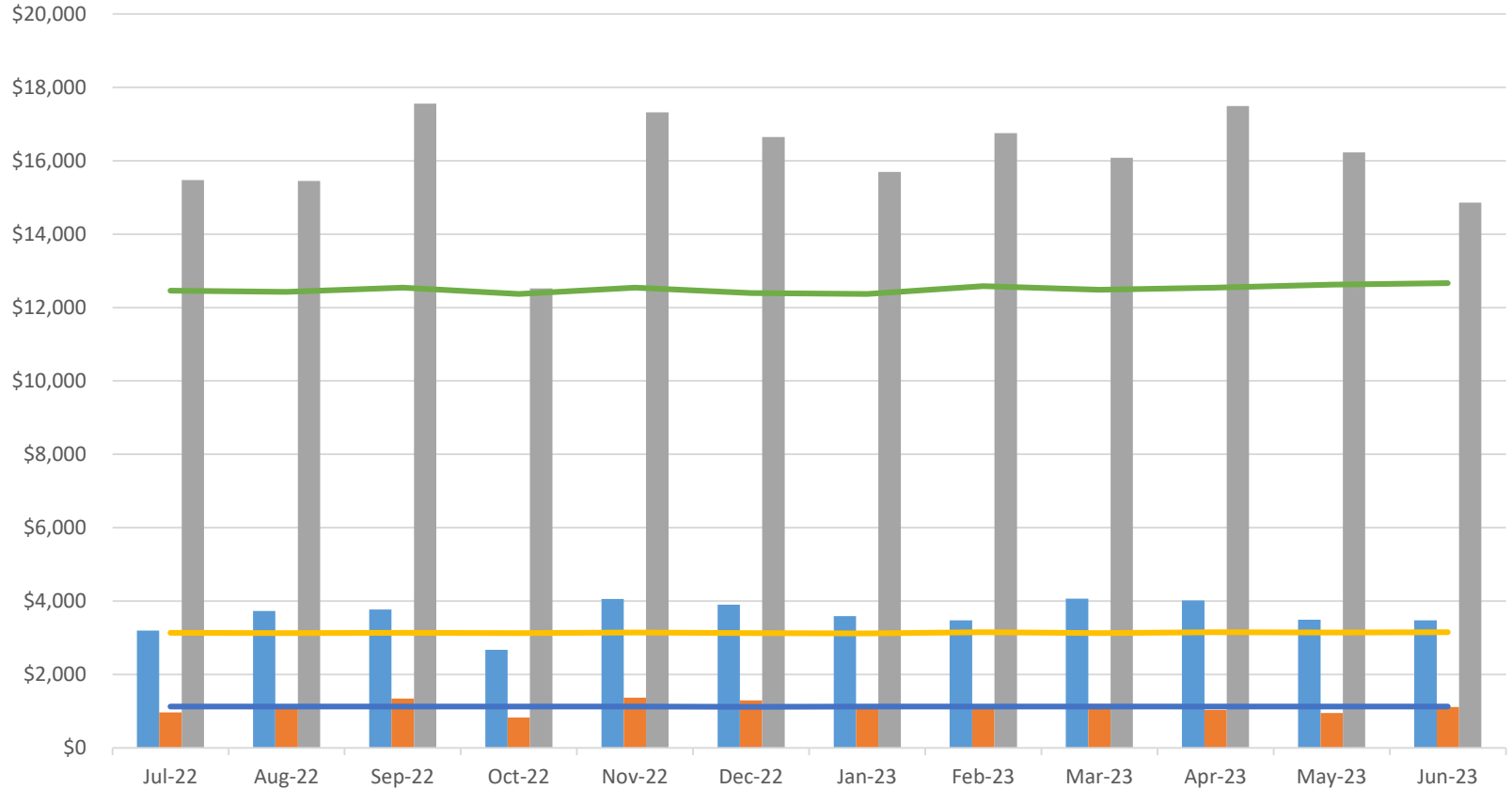
Expenses



Expenses

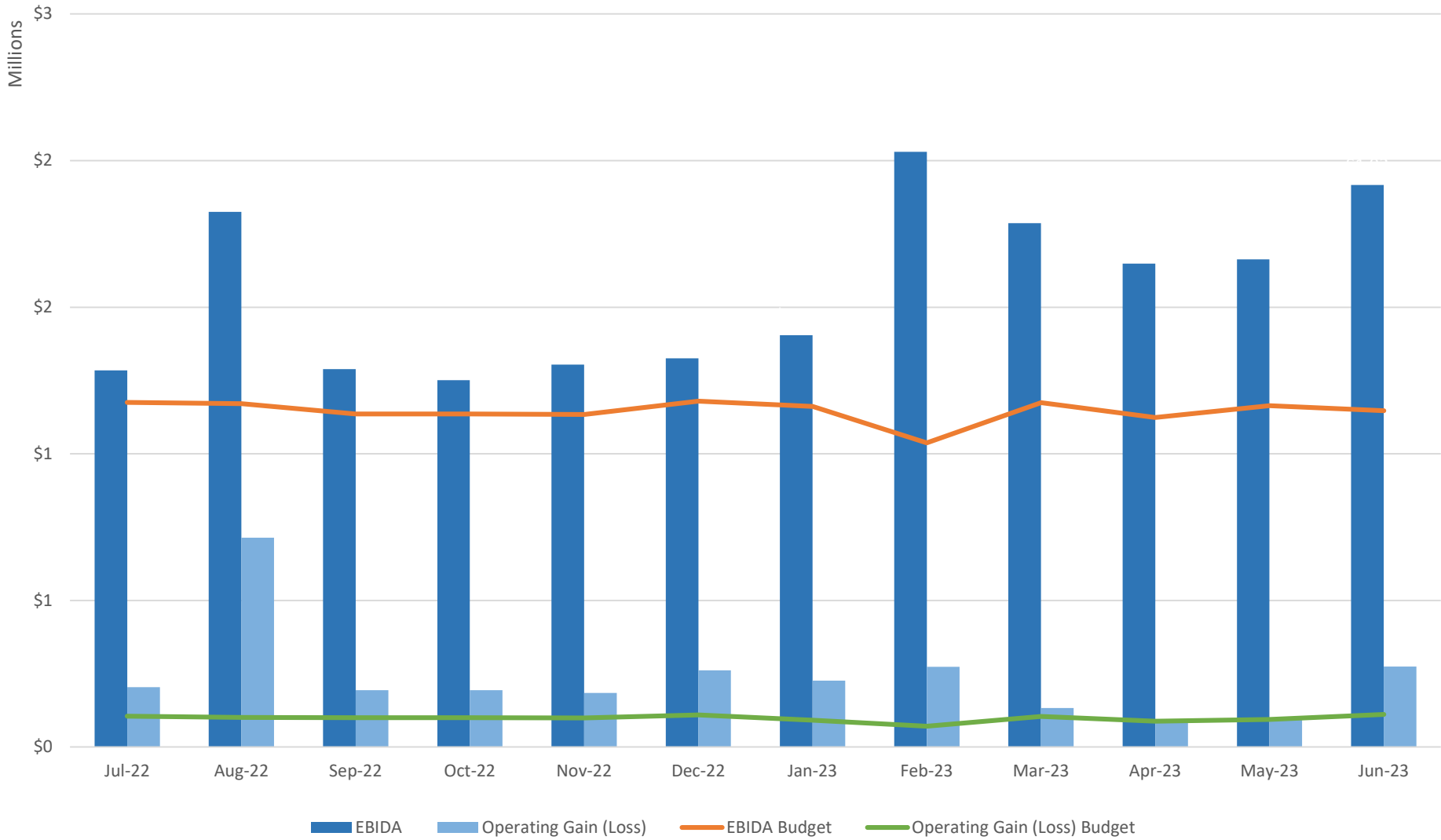


Operating Metrics

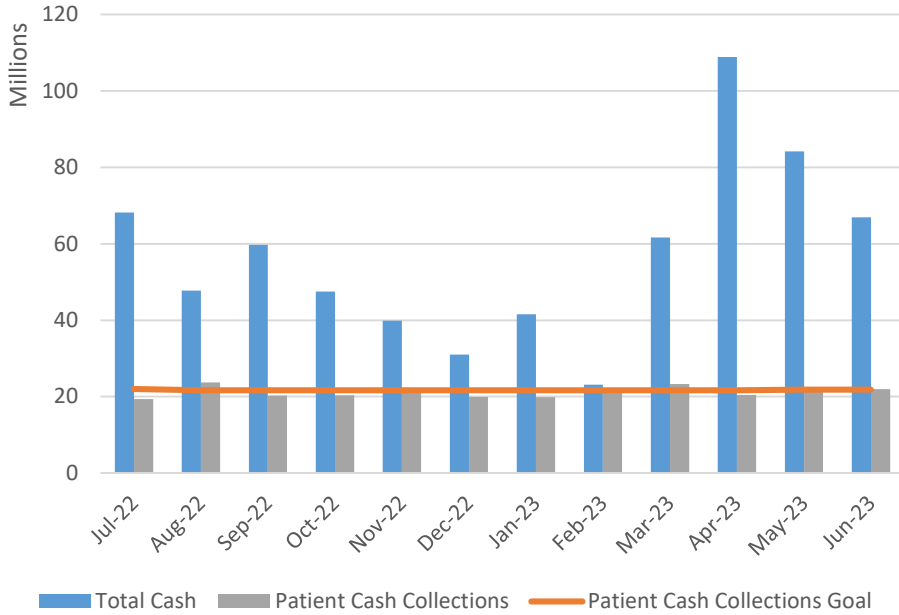


| | Jul-22 | Aug-22 | Sep-22 | Oct-22 | Nov-22 | Dec-22 | Jan-23 | Feb-23 | Mar-23 | Apr-23 | May-23 | Jun-23 |
|-----------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Supply Expense per AA | \$3,195 | \$3,728 | \$3,773 | \$2,670 | \$4,056 | \$3,902 | \$3,588 | \$3,480 | \$4,065 | \$4,016 | \$3,497 | \$3,473 |
| Pharm Cost per AA | \$966 | \$1,101 | \$1,349 | \$826 | \$1,368 | \$1,293 | \$1,153 | \$1,094 | \$1,199 | \$1,037 | \$948 | \$1,115 |
| Net Revenue Per AA | \$15,476 | \$15,451 | \$17,552 | \$12,523 | \$17,317 | \$16,642 | \$15,694 | \$16,749 | \$16,078 | \$17,486 | \$16,224 | \$14,857 |
| Budget Supp/AA | \$3,136 | \$3,125 | \$3,140 | \$3,127 | \$3,145 | \$3,124 | \$3,122 | \$3,156 | \$3,133 | \$3,151 | \$3,145 | \$3,153 |
| Budget Pharm/AA | \$1,126 | \$1,126 | \$1,126 | \$1,126 | \$1,126 | \$1,126 | \$1,126 | \$1,127 | \$1,128 | \$1,127 | \$1,126 | \$1,127 |
| Budget Net Rev/AA | \$12,461 | \$12,428 | \$12,543 | \$12,368 | \$12,545 | \$12,398 | \$12,368 | \$12,579 | \$12,483 | \$12,539 | \$12,624 | \$12,661 |

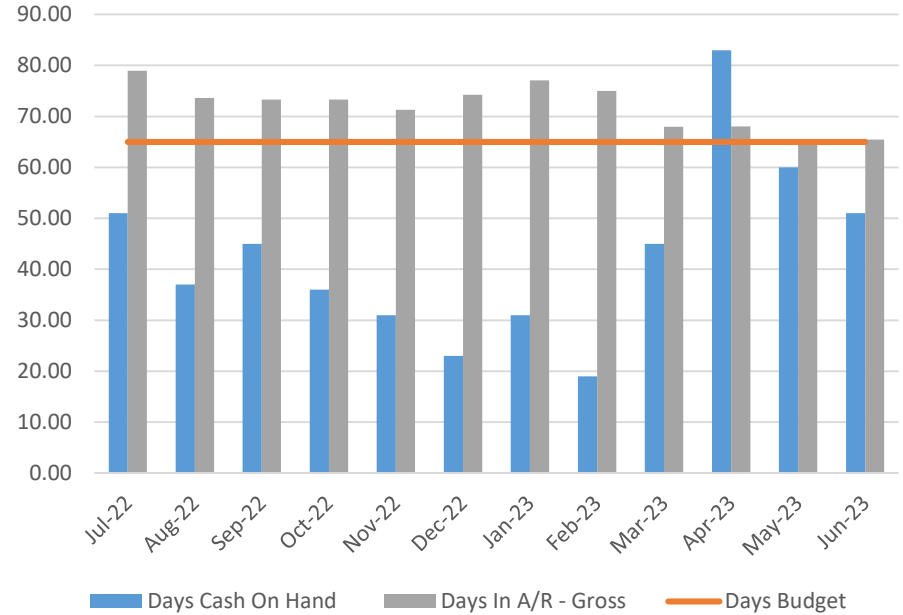
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
 June 30, 2023

| | APRIL | MAY | JUNE | BUDGET MAY | VARIANCE POS (NEG) | PY MAY |
|---|---------------|---------------|---------------|---------------|-----------------------|----------------|
| Gross Patient Revenue | \$ 91,861,816 | \$ 99,228,998 | \$ 97,404,066 | \$ 93,066,013 | 5% | \$ 92,031,279 |
| Contractual Deductions | (69,360,870) | (75,262,969) | (76,052,042) | (71,936,160) | 6% | (68,585,231) |
| Net Revenue | 22,500,945 | 23,966,029 | 21,352,024 | 21,129,853 | 13.4% | 23,446,049 |
| Indigent Funding | 15,234,085 | 16,191,888 | 16,234,085 | 13,907,054 | 17% | 88,541,026 |
| Correctional Medicine | 2,608,481 | 2,608,481 | 2,608,481 | 2,658,247 | (2%) | 2,583,481 |
| County Contribution | 285,211 | 285,211 | 285,211 | 281,729 | 1% | 285,211 |
| Incentive Funding | 0 | 0 | 0 | 0 | 0% | 0 |
| Net Patient Revenue | 40,628,722 | 43,051,609 | 40,479,801 | 37,976,882 | 7% | 114,855,766 |
| Other Operating Revenue | 1,869,167 | 85,924 | 2,165,774 | 2,193,942 | (1%) | 3,121,491 |
| Other Non-Operating Revenue | 12,929 | 1,711,470 | 13,499 | 47,856 | (72%) | 11,150,811 |
| Total Revenue | 42,510,819 | 44,849,003 | 42,659,074 | 40,218,681 | 6% | 129,128,068 |
| Expenses | | | | | | |
| Salaries | 17,806,622 | 19,193,756 | 18,074,740 | 16,547,484 | 9% | 17,595,268 |
| Employee Benefits | 6,969,277 | 7,749,770 | 7,277,709 | 7,117,025 | 2% | (14,149,875) |
| Registry | 2,543,355 | 2,679,781 | 2,499,272 | 3,010,289 | (17%) | 4,266,993 |
| Medical Fees | 2,178,445 | 2,205,580 | 2,163,682 | 1,730,640 | 25% | 1,796,976 |
| Other Professional Fees | 2,018,576 | 2,383,920 | 2,044,784 | 1,570,785 | 30% | 2,123,112 |
| Supplies | 5,167,092 | 5,166,280 | 4,991,485 | 5,262,047 | (5%) | 4,243,048 |
| Purchased Services | 3,057,774 | 2,476,452 | 2,609,869 | 2,289,554 | 14% | 3,042,908 |
| Other Expenses | 1,121,375 | 1,330,266 | 1,081,045 | 1,543,770 | (30%) | (574,714) |
| Operating Expenses | 40,862,516 | 43,185,805 | 40,742,586 | 39,071,593 | 4% | 18,343,716 |
| Earnings Before Interest, Depreciation, and Amortization (EBIDA) | \$ 1,648,303 | \$ 1,663,198 | \$ 1,916,488 | \$ 1,147,088 | 67% | \$ 110,784,352 |
| EBIDA Margin | 4% | 4% | 4% | 3% | 58% | 86% |
| Interest | 141,943 | 153,918 | 154,659 | 83,419 | 85% | 346,155 |
| Depreciation | 663,717 | 664,728 | 633,644 | 660,849 | (4%) | 659,869 |
| Amortization | 753,251 | 745,301 | 854,104 | 291,183 | 193% | 2,727,532 |
| Total Expenses | 42,421,427 | 44,749,752 | 42,384,994 | 40,107,044 | 6% | 22,077,273 |
| Operating Gain (Loss) | \$ 89,392 | \$ 99,251 | \$ 274,081 | \$ 111,637 | 146% | \$ 107,050,795 |
| Operating Margin | 0.2% | 0.2% | 0.6% | 0.3% | 131.5% | 82.9% |

KERN MEDICAL
Year to Date: Revenue & Expense
June 30, 2023

| | ACTUAL | BUDGET | VARIANCE | PY | PY VARIANCE |
|---|------------------|------------------|-----------|------------------|-------------|
| | FYTD | FYTD | POS (NEG) | FYTD | POS (NEG) |
| Gross Patient Revenue | \$ 1,143,874,305 | \$ 1,157,545,911 | (1%) | \$ 1,148,661,789 | (0.4%) |
| Contractual Deductions | (872,058,392) | (897,098,081) | (3%) | (874,912,112) | (0.3%) |
| Net Revenue | 271,815,912 | 260,447,830 | 4% | 273,749,676 | |
| Indigent Funding | 175,323,644 | 169,202,486 | 3.6% | 259,189,175 | (32%) |
| Correctional Medicine | 31,016,094 | 32,342,004 | (4%) | 30,859,578 | 0.5% |
| County Contribution | 3,422,531 | 3,427,699 | (0.2%) | 3,422,846 | (0.01%) |
| Incentive Funding | 1,404,200 | 0 | 0% | 0 | 0% |
| Net Patient Revenue | 482,982,382 | 465,420,019 | 4% | 567,221,275 | (15%) |
| Other Operating Revenue | 26,000,600 | 26,576,790 | (2%) | 31,487,620 | (17%) |
| Other Non-Operating Revenue | 1,857,694 | 582,252 | 219% | 21,571,609 | (91%) |
| Total Revenue | 510,840,676 | 492,579,062 | 4% | 620,280,504 | (18%) |
| Expenses | | | | | |
| Salaries | 209,587,325 | 202,884,482 | 3.3% | 195,530,341 | 7% |
| Employee Benefits | 86,841,732 | 86,104,877 | 0.9% | 61,447,964 | 41% |
| Registry | 34,623,148 | 37,671,364 | (8%) | 56,381,141 | (39%) |
| Medical Fees | 25,481,810 | 21,605,987 | 18% | 21,391,847 | 19% |
| Other Professional Fees | 25,185,895 | 18,563,825 | 36% | 19,695,634 | 28% |
| Supplies | 61,353,757 | 65,391,874 | (6%) | 67,384,087 | (9%) |
| Purchased Services | 30,478,754 | 27,803,850 | 10% | 24,873,064 | 23% |
| Other Expenses | 18,559,508 | 18,782,534 | (1%) | 17,090,003 | 9% |
| Operating Expenses | 492,111,930 | 478,808,793 | 3% | 463,794,079 | 6% |
| Earnings Before Interest, Depreciation, and Amortization (EBIDA) | \$ 18,728,747 | \$ 13,770,269 | 36% | \$ 156,486,425 | (88%) |
| EBIDA Margin | 4% | 3% | 31% | 25% | (85%) |
| Interest | 1,767,707 | 1,014,929 | 74% | 1,274,834 | 39% |
| Depreciation | 8,258,426 | 8,040,327 | 3% | 8,026,415 | 3% |
| Amortization | 5,948,151 | 3,542,732 | 68% | 5,693,711 | 4% |
| Total Expenses | 508,086,214 | 491,406,780 | 3% | 478,789,039 | 6% |
| Operating Gain (Loss) | \$ 2,754,462 | \$ 1,172,281 | 135% | \$ 141,491,465 | (98%) |
| Operating Margin | 0.5% | 0.2% | 126.6% | 22.8% | (98%) |

**KERN MEDICAL
BALANCE SHEET**

| | JUNE 2023 | JUNE 2022 |
|---|-----------------------|-----------------------|
| ASSETS: | | |
| <i>Total Cash</i> | \$ 66,921,303 | \$ 78,039,008 |
| Patient Receivables Subtotal | 231,601,324 | 260,462,574 |
| Contractual Subtotal | (174,185,680) | (214,547,276) |
| <i>Net Patient Receivable</i> | 57,415,643 | 45,915,297 |
| Total Indigent Receivable | 197,883,640 | 132,865,124 |
| Total Other Receivable | 16,613,810 | 9,070,185 |
| Total Prepaid Expenses | 5,666,451 | 4,838,152 |
| Total Inventory | 5,487,464 | 4,150,421 |
| <i>Total Current Assets</i> | 349,988,312 | 274,878,186 |
| Deferred Outflows of Resources | 105,241,458 | 127,290,855 |
| Total Land, Equipment, Buildings and Intangibles | 252,842,138 | 224,281,661 |
| Total Construction in Progress | 11,851,019 | 6,985,298 |
| <i>Total Property, Plant & Equipment</i> | 264,693,157 | 231,266,959 |
| Total Accumulated Depr & Amortization | (155,408,105) | (136,669,998) |
| <i>Net Property, Plant, and Equipment</i> | 109,285,051 | 94,596,961 |
| <i>Total Long Term Assets</i> | 105,241,458 | 127,290,855 |
| <i>Total Assets</i> | \$ 564,514,821 | \$ 496,766,002 |

**KERN MEDICAL
BALANCE SHEET**

| | JUNE 2023 | JUNE 2022 |
|--|-----------------------|-----------------------|
| LIABILITIES & EQUITY: | | |
| Total Accounts Payable | \$ 12,680,744 | \$ 17,991,251 |
| Total Accrued Compensation | 22,551,130 | 28,191,861 |
| Total Due Government Agencies | 14,963,552 | 17,492,040 |
| Total Other Accrued Liabilities | 27,430,669 | 20,633,619 |
| <i>Total Current Liabilities</i> | 77,626,096 | 84,308,772 |
| Unfunded Pension Liability | 284,243,193 | 381,152,811 |
| Other Long-Term Liabilities | 134,837,243 | 61,859,422 |
| <i>Total Long-Term Liabilities</i> | 419,080,436 | 443,012,233 |
| <i>Total Liabilities</i> | 496,706,532 | 527,321,005 |
| Fund Balance | 36,714,022 | 36,714,022 |
| Retained Earnings | 31,094,268 | (67,269,024) |
| <i>Total Fund Balance</i> | 67,808,290 | (30,555,003) |
| <i>Total Liabilities and Fund Balance</i> | \$ 564,514,821 | \$ 496,766,002 |



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

August 16, 2023

Subject: Kern County Hospital Authority Chief Executive Officer Report

Recommended Action: Receive and File

Summary:

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



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

August 16, 2023

Subject: Monthly report on What's Happening at Kern Medical Center

Recommended Action: Receive and File

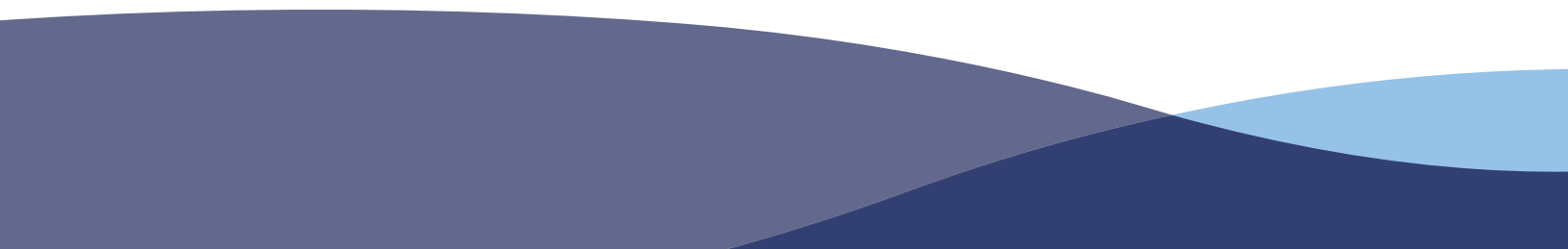
Summary:

Each month Kern Medical will be sharing a report with your Board on "What's Happening" in and around Kern Medical.

Therefore, it is recommended that your Board receive and file the attached report on What's Happening at Kern Medical.



What's Happening?



TEACHING KITCHEN



ROADWAY SAFETY

**ROADWAY
SAFETY**

 KernMedical

HOUCHIN BLOOD DRIVE

blood drive

FREE
TICKETS
TO THE
KERN COUTNY
FAIR



TUESDAY, SEPTEMBER 5 • 10:00 AM -3:00 PM

KERN MEDICAL

1700 MT VERNON AVENUE • BAKERSFIELD, CA 93306

TO MAKE AN APPOINTMENT, SCAN THE CODE TO THE RIGHT WITH YOUR
PHONE'S CAMERA OR VISIT [HCBB.COM/SCHEDULE](https://www.hcbb.com/schedule)



when you give, people live

HOUCHIN 
COMMUNITY BLOOD BANK

HEALTHFUL HARVEST



HEALTHFUL HARVEST

**Save the date for a fun-filled community health event
with food, music, and giveaways!**

SATURDAY, OCTOBER 28, 2023

12:00 PM TO 4:00 PM

**Haven Drive Middle School
341 Haven Drive, Arvin 93203**

For more event information, call 661.632.5562

EVENT PRESENTED BY:



KERN MEDICAL IN THE NEWS - July 4th Firework Safety





PARTY

in the parking lot

*Physicals, Wellness Checks,
Immunizations, Catch-Up Vaccines*

Backpacks,
Haircuts,
Food & Beverages,
Giveaways
& Music!

Saturday, August 5th, 2023
8:00 AM - 12:00 PM
1111 Columbus St, STE 1000
Bakersfield, CA 93305





OUTREACH ACTIVITIES - SIM Center

| Outreach Program | Date | Location |
|-------------------------|-------------|---|
| SIM Center | 9/16/22 | Kern County Fair |
| SIM Center | 12/7/2022 | Compton Jr. High STEAM Night |
| SIM Center | 2/16/23 | Harding Family STEAM Night |
| SIM Center | 4/1/23 | MESA STEM & Pre-health Conference |
| SIM Center | 4/18/23 | Curran Middle School STEM Night |
| SIM Center | 4/26/23 | Frank West Jr. High STEAM Night |
| SIM Center | 5/12/23 | Del Oro High Health and Community Resource Fair |
| SIM Center | 7/27/23 | Ridgecrest Simulation Center |

OUTREACH ACTIVITIES - Trauma Center

| Outreach Program | Date | Location | # of Participants |
|------------------|---------|--|-------------------|
| Stop the Bleed | 3/22/23 | Panama Buena Vista School District (school nurses) | 20 |
| Stop the Bleed | 3/28/23 | South High | 100 |
| Stop the Bleed | 3/29/23 | Delano Unified School District (school nurses) | 20 |
| Stop the Bleed | 3/29/23 | Greenfield School District | 20 |
| Roadway Safety | 4/11/23 | Independence High | 120 |
| Roadway Safety | 4/27/23 | Independence High | 150 |
| Stop the Bleed | 4/28/23 | Kern County STEM Expo | 200 |
| Stop the Bleed | 5/8/23 | Adventist Health- Health Expo | 50 |
| Stop the Bleed | 5/8/23 | Kern High School District (school nurses) | 25 |
| Stop the Bleed | 5/11/23 | Kern County Fire Department, Tehachapi | 33 |
| Stop the Bleed | 5/11/23 | Community Emergency Response Team, Tehachapi | 15 |
| Stop the Bleed | 6/12/23 | Liberty High | 120 |
| Roadway Safety | 6/14/23 | Independence High | 60 |
| Roadway Safety | 7/7/23 | Del Oro High School | 30 |

NATIONAL RECOGNITIONS IN JULY

- Cord Blood Awareness Month
- National Cleft & Craniofacial Awareness and Prevention Month
- National Hemochromatosis Awareness Month
- National Minority Mental Health Awareness Month
- Sarcoma Awareness Month
- Eye Injury Prevention Month
- UV Awareness Month
- World Population Day (July 11)
- World Brain Day (July 22)
- World Hepatitis Day (July 28)

NATIONAL RECOGNITIONS IN AUGUST

- Children's Eye Health and Safety Awareness Month
- Digestive Tract Paralysis Awareness Month
- Gastroparesis Awareness Month
- National Breastfeeding Month
- National Eye Exam Month
- National Immunization Awareness Month
- Psoriasis Action Month
- Spinal Muscular Atrophy Awareness Month
- Summer Sun Safety Month
- World Lung Cancer Day (Aug. 1)
- National Grief Awareness Day (Aug. 30)
- International Overdose Awareness Day (Aug. 31)

Did You Know?

Kern Medical Updates & Relocations

 KernMedical

Did You Know?

Truxtun Pediatrics relocated to Stockdale



Did You Know?

19th Street is home to the Ear, Nose and Throat (ENT) Department



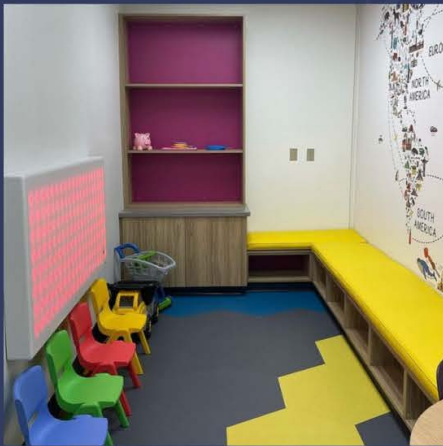
Did You Know?

Radiology services are now offered at Q Street with a special focus on Women's Imaging



Did You Know?

The new Inpatient Pediatric Unit is located on the 4th floor



Did You Know?

Non-Stress Test (NST) Clinic for Obstetric patients has relocated to a newly remodeled space at Columbus



Did You Know?

Columbus has remodeled the Pediatric Unit



From: [nydia.madera](#)
To: [Public Comment](#)
Subject: Comment on agenda item 16
Date: Monday, July 17, 2023 4:39:21 PM

CAUTION: This message originated from outside the Kern Medical email system. **DO NOT** click links or open attachments unless you recognize the sender and know the content is safe.

To Kern County Hospital Authority?

I would like an answer or perhaps an explanation in behalf of all of my coworkers at Kern Medical, on how Mr. Thygerson's job is worthy of a salary of over \$600,000 per year? I understand that he is a qualified professional. But why is everyone else forgotten? Why is it that unlicensed staff have to fight and demand decent pay for the jobs we do? I hope you all realize at some point that customer satisfaction starts with the jobs done at bedside from unlicensed staff to everyone else. We matter too!

From: [Tuesday Ochoa](#)
To: [Public Comment](#)
Subject: Comment on agenda item 16
Date: Tuesday, July 18, 2023 8:22:38 AM

CAUTION: This message originated from outside the Kern Medical email system. **DO NOT** click links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern:

I do not agree with agenda item 16. Kern Medical is bleeding money in useless positions and creating positions for family and friends when our loyal staff are working tirelessly with no relief. Most of units are understaffed and are working in conditions that are violate OSHA guidelines. If Scott really wanted to improve our hospital he would reduce his salary request and invest that money back into making our wages hospital wide meet the wage threshold and improve the conditions of the hospital. Scott is not a physician and should not be making physicians wages when is frontline staff is underpaid. He is not at bedside and not experiencing the suffering our staff is in the unsafe working conditions.

Cut his salary and improve the working conditions of our hospital. New HVAC system is a must, update the waiting areas, etc.

The request for \$600,000 with pay increase annually is a slap in the face to our staff and to the hospital.

No loyalty to the hospital or to our patients this is completely sickening..

From: [Toni Morrow](#)
To: [Public Comment](#)
Subject: Comment on agenda item 16
Date: Tuesday, July 18, 2023 11:47:46 AM

CAUTION: This message originated from outside the Kern Medical email system. **DO NOT** click links or open attachments unless you recognize the sender and know the content is safe.

Our Laboratory Department has a high turnover, does not meet the comparable pay rate with other hospitals, no incentives, cap on steps for positions, loyal long term employees waiting for a .75 cent raise, many of us not even close to making 25.00 an hour for putting in 20 plus years of service. We are undervalued, underpaid, and your salary package just inflicted on us the lowest moral since the last negotiation when many Departments were excluded in additional step raises , or pay rate adjustments. Can not understand how this hospital continues to shorty change every one in every possible way.

From: [Chris Harkins](#)
To: [Public Comment](#)
Cc: [Estevan Gutierrez](#); [Yvonne Davila](#); [Patrick Phillips](#); [Michael Carter](#); [Sydnee Galusha](#); [Laronda Dillard Smith](#)
Subject: Board of Governors Meeting Agenda Item #16
Date: Tuesday, July 18, 2023 2:58:08 PM

CAUTION: This message originated from outside the Kern Medical email system. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Subject: Urgent Request to Reconsider Appointment of Mr. Thygerson as CEO

Dear Hospital Board of Governors,

I hope this email finds you well. I am writing to express my deep concern regarding the recent decision to appoint Mr. Thygerson as the CEO of our hospital. I kindly request that you reconsider this appointment, taking into account the widespread concerns expressed by hospital staff and stakeholders.

First and foremost, it has come to the attention of staff that there is pending litigation involving Mr. Thygerson and his affiliation with Meridian Consulting Group. This raises significant doubts about his ability to lead the hospital effectively and maintain its reputation. Such litigation not only presents potential legal and financial risks but also casts a shadow of uncertainty on our institution. Transparency as to why Mr. Thygerson has decided to no longer be affiliated with Meridian is vital in understanding this appointment.

Furthermore, there has been a noticeable decline in performance during Mr. Thygerson's tenure. Hospital staff members have expressed their dissatisfaction with his management style, citing poor communication, lack of transparency, and a general disregard for employee well-being. This has resulted in decreased morale and a negative impact on the overall work environment.

Given the critical role of the CEO in shaping the hospital's future and fostering a positive culture, it is crucial to appoint an individual who inspires confidence, demonstrates strong leadership qualities, and possesses a track record of success. It is our collective belief that Mr. Thygerson does not meet these criteria, and therefore, his appointment could hinder the hospital's progress and compromise patient care.

I implore you to reconsider your decision and thoroughly evaluate alternative candidates who have a proven track record of exemplary leadership, a commitment to transparency, and a genuine concern for the well-being of both staff and patients. This decision will have a far-reaching impact on the future of our hospital, and it is vital to make the right choice for the sake of our community's health and well-being.

Thank you for your attention to this matter. I trust that you will give careful consideration to the concerns raised by the hospital staff and take appropriate action to ensure the continued success and prosperity of our institution.

Sincerely,

Christopher Harkins BSN, RN
Clinical Nurse Leader
SEIU 521 Union Steward

**BOARD OF SUPERVISORS
COUNTY OF KERN**

SUPERVISORS

| | |
|-----------------------|------------|
| PHILLIP PETERS | District 1 |
| ZACK SCRIVNER | District 2 |
| JEFF FLORES | District 3 |
| DAVID COUCH | District 4 |
| LETICIA PEREZ | District 5 |



KATHLEEN KRAUSE
CLERK OF THE BOARD OF SUPERVISORS
Kern County Administrative Center
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
Telephone (661) 868-3585
TTY (800) 735-2929
www.kerncounty.com

July 21, 2023

Mr. Scott Thygerson, CEO
Kern Medical
1700 Mount Vernon Avenue
Bakersfield, CA 93305

Dear Mr. Thygerson:

On June 20, 2023, the Kern County Board of Supervisors announced the appointment of James Zervis as Chief Administrative Officer, to be effective August 5, 2023. Since the composition of the Kern County Hospital Authority's Board of Governors includes the County's Chief Administrative Officer as ex-officio member, I wanted to inform you of this action in advance of the Hospital Authority's next regularly scheduled meeting. To relay any information about meetings or issues, please forward to the attention of Mr. Zervis at the County Administrative Office at 1115 Truxtun Avenue, 5th Floor, Bakersfield, CA 93301.

If we can be of further service, please call the Clerk of the Board at the number shown above.

Sincerely,

/s/ KATHLEEN KRAUSE
Clerk of the Board

KK

cc: James Zervis
Karen Barnes

Friday July 28, 2023

To Whom It May Concern,

I am submitting my letter of resignation from the Kern County Hospital Authority Governing Board.

I appreciate the opportunity I was given to serve on the Governing Board of Kern Medical.

Sincerely,

A handwritten signature in black ink, appearing to read 'Raji Brar', with a long horizontal flourish extending to the right.

Raji Brar

**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 August 16, 2023, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on August 16, 2023, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

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

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

Government Code Section 54956.9

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

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

(Government Code Section 54957.7)

The Board of Governors will hold a closed session on August 16, 2023, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –

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

Government Code Section 54957.7

The Board of Governors will hold a closed session on August 16, 2023, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Unrepresented Employees (Government Code Section 54957.6) –