



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, August 18, 2021

11:30 A.M.

BOARD TO RECONVENE

Board Members: Alsop, Berjis, Bigler, Brar, Kitchen, McLaughlin, Pelz
Roll Call:

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the President, Hospital and Clinic Operations recognizing the contributions of Kern Medical Center employees upon the hospital's receipt of the PRISM Eagle Award for Excellence in Development and Implementation of COVID-19 Programs and Resources – MAKE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on July 14, 2021 – APPROVE

CA

- 5) Proposed retroactive Amendment No. 1 to Memorandum of Understanding 61320 with Kern Health Systems, an independent contractor, for translation services for Kern Medical Center patients, for the period December 14, 2020 through June 13, 2021, extending the term for six months from June 14, 2021 through December 13, 2021, in an amount not to exceed \$425,000 to cover the term – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Agreement with InTouch Technologies, Inc., doing business as Teladoc Health, an independent contractor, for purchase of equipment to aid in the rapid diagnosis of patients with suspected stroke from August 18, 2021 through August 17, 2024, in an amount not to exceed \$116,760 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed retroactive Amendment No. 1 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery for the period January 1, 2016 through December 31, 2022, extending the term for three years from January 1, 2023 through December 31, 2025, and increasing the maximum payable by \$2,550,000, from \$6,424,358 to \$8,974,358, to cover the extended term, effective August 3, 2021 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed retroactive Amendment No. 4 to Agreement 161-2016 with Valley Children's Medical Group, Inc., an independent contractor, for on-site consultation services to pediatric patients for the period August 2, 2015 through August 1, 2021, extending the term for one year from August 2, 2021 through August 1, 2022, and increasing the maximum payable by \$180,000, from \$969,000 to \$1,149,000, to cover the extended term, effective August 2, 2021 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Amendment No. 1 to Agreement 052-2019 with Pacific Gynecologic Specialists, an independent contractor, for professional medical services in the Department of Obstetrics and Gynecology for the period September 1, 2019 through August 31, 2021, extending the term for two years from September 1, 2021 through August 31, 2023, and increasing the maximum payable by \$800,000, from \$800,000 to \$1,600,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Agreement with Frank W. Sabatelli, M.D., a contract employee, for professional medical services in the Department of Radiology from August 28, 2021 through August 27, 2024, in an amount not to exceed \$2,350,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed retroactive Amendment No. 2 to Agreement 716-2016 with the County of Kern for health care services, finance and support, reducing the total exposure of the County to obligations associated with Cost Reports for the reporting years ending 2012 and payment of \$12,428,671 for amounts associated with reporting years ending in 2012 or before that were refunded to the Kern County Hospital Authority, effective August 10, 2021 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed retroactive Grant Agreement with the County of Kern to provide funding made available through the American Rescue Plan Act of 2021 to respond to the direct public health emergency and economic impacts of COVID-19 from March 3, 2021 through December 31, 2024, in an amount not to exceed \$10,000,000, effective August 10, 2021 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed rescission of Amendment No. 2 to Agreement 147-2019 with the County of Kern, as represented by the County Administrative Office and Kern County Sheriff's Office, for the provision of health care services to in-custody adult inmates detained in the Kern Justice Facility –
APPROVE

CA

- 14) Proposed retroactive Agreement with the County of Kern, as represented by the County Administrative Office and Kern County Sheriff's Office, for the provision of health care services to in-custody adult inmates detained in the Kern Justice Facility from July 1, 2021 through June 30, 2022 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed acceptance of donation from Safety National for travel and related expenses for one Kern Medical Center employee to attend "The Workers' Compensation & Risk Conference" in Dana Point, California, from September 7-10, 2021 –
APPROVE; ADOPT RESOLUTION

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

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

CA

- 18) Claims and Lawsuits Filed as of July 31, 2021 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 19) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 20) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Adria Ottoboni v. Kern County Hospital Authority, a public entity; and Does 1 through 50, inclusive, Kern County Superior Court Case No. BCV-19-102820 –
- 21) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Tyler Andrews, an individual v. Kern County Hospital Authority, a public agency that is a local unit of government, which owns and operates Kern Medical Center; and DOES 1 through 100, inclusive, Kern County Superior Court Case No. BCV-19-103529 TSC –
- 22) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, SEPTEMBER 15, 2021 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

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

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

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

18) CLAIMS AND LAWSUITS FILED AS OF JULY 31, 2021 –
RECEIVE AND FILE

- A) Notice of Claim and Conference in the matter of Margarita Sandoval, State of California, Department of Industrial Relations, State Case Number WC-CM-836112



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, July 14, 2021

11:30 A.M.

BOARD TO RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz
Roll Call: 5 Present; 1 Absent - Brar

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

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

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on June 16, 2021 –
APPROVED
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

CA

- 4) Proposed retroactive Agreement with Healthcare Performance Group Inc., an independent contractor, containing non-standard terms and conditions, for professional consulting services for the EHR upgrade related to the Cerner Millennium project from June 11, 2021 through June 10, 2022, in an amount not to exceed \$200,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 039-2021
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

CA

- 5) Proposed Amendment No. 1 to Agreement 496-2016 with UKG Inc., an independent contractor, containing non-standard terms and conditions, for the provision of payroll and human resources information system software, for the period April 18, 2016 through August 1, 2021, extending the for term two years from August 2, 2021 through August 1, 2023, in an amount not to exceed \$975,000 per annum to cover the extended term –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 040-2021
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

CA

- 6) Proposed Agreement with Jeffrey L. Huffman, M.D., a contract employee, for professional medical services in the Department of Surgery from July 31, 2021 through July 30, 2026, in an amount not to exceed \$4,088,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 041-2021
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

CA

- 7) Proposed retroactive Amendment No. 1 to Memorandum of Understanding 61320 with Kern Health Systems, an independent contractor, for translation services for Kern Medical Center patients, for the period December 14, 2020 through June 13, 2021, extending the term through June 30, 2022, in an amount not to exceed \$600,000 to cover the extended term –
WITHDRAWN

CA

- 8) Proposed appointment of Jeffrey G. Nalesnik, M.D., as Chair, Department of Surgery –
RATIFIED APPOINTMENT –
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

CA

- 9) Proposed retroactive approval of successor Memorandum of Understanding with Committee of Interns and Residents/Service Employees International Union, Local 1957 from July 1, 2021 through June 30, 2024, in an amount not to exceed \$939,692 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 043-2021; AUTHORIZED CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER AND HUMAN RESOURCES TO IMPLEMENT CHANGES
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

CA

- 10) Proposed Resolution updating the specified powers and duties of the Kern County Hospital Authority Chief Financial Officer, effective July 14, 2021 – APPROVED; ADOPTED RESOLUTION 2021-006
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

CA

- 11) Proposed Medical Staff Peer Review Policy – APPROVED
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

- 12) Proposed discussion and recommendation to the Kern County Board of Supervisors to appoint a qualified candidate to the Kern County Hospital Authority Board of Governors to fill the Community Member at Large vacancy created by the resignation of Christina Sistrunk, term to expire June 30, 2024 – DISCUSSED; RECOMMENDED APPOINTMENT OF JACQUI KITCHEN TO FILL MEMBER AT LARGE VACANCY, TERM TO EXPIRE JUNE 30, 2024; REFERED TO KERN COUNTY BOARD OF SUPERVISORS TO MAKE APPOINTMENT
Alsop-Pelz: 5 Ayes; 1 Absent - Brar

- 13) Proposed election of officers to the Kern County Hospital Authority Board of Governors to include Russell E. Bigler, Chairman, Philip McLaughlin, Vice-Chairman, and Amir Berjis, M.D., Secretary/Treasurer, terms to expire June 30, 2023 – ELECTED OFFICERS
Pelz-Alsop: 5 Ayes; 1 Absent - Brar

- 14) Kern County Hospital Authority financial report – RECEIVED AND FILED
Berjis-McLaughlin: 5 Ayes; 1 Absent - Brar

- 15) Kern County Hospital Authority Chief Executive Officer report – RECEIVED AND FILED
Berjis-McLaughlin: 5 Ayes; 1 Absent - Brar

CA

- 16) Claims and Lawsuits Filed as of June 30, 2021 – RECEIVED AND FILED
McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar

ADJOURNED TO CLOSED SESSION
Alsop-Pelz

CLOSED SESSION

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

RECONVENED FROM CLOSED SESSION

Alsop-Berjis

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 17 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR MCLAUGHLIN; 1 ABSENT - DIRECTOR BRAR), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REVIEW/RELEASE OF PROCTORING, REQUEST FOR ADDITIONAL PRIVILEGES, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 18 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 19 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, AUGUST 18, 2021 AT 11:30 A.M.

Pelz

/s/ Mona A. Allen
Authority Board Coordinator

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



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

August 18, 2021

Subject: Proposed retroactive Amendment No. 1 to Memorandum of Understanding 61320 with Kern Health Systems (“KHS”) Translation Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical recommends that your Board retroactively approve the attached proposed Amendment No. 1 to the MOU with Kern Health Systems for translation services for all Kern Medical patients, which includes KHS Members. The Amendment extends the term from June 14, 2021 through December 13, 2021.

On December 11, 2020, Kern Medical and KHS entered into the MOU whereby KHS provides the necessary equipment for use by Kern Medical to access the audio and video translation services for the entire Kern Medical patient population for a period not to exceed 6 months, commencing December 14, 2020. Kern Medical agreed to pay KHS an amount not to exceed 70% of monthly utilization of the KHS Language Line Translation Services.

Based on the average monthly usage of \$29,158 from January 2021 through June 2021, the estimated maximum payable of the MOU will not exceed \$425,000 over the one-year term of the MOU.

Previous Agreements	Description of Services	Variance
Original Agreement, dated December 11, 2020	Audio and Video Translation Services for the entire Kern Medical patient population between December 14, 2020 – June 13, 2021.	\$174,948 (approx.)
Amendment No. 1, dated June 14, 2021	Continuation of Audio and Video Translation Services for the entire Kern Medical patient population extending the term through December 13, 2021.	\$174,948 (approx.)

Therefore, it is recommended that your Board retroactively approve Amendment No. 1 to the MOU with KHS for the continued provision of translation services, extending the term for six months from June 14, 2021 through December 13, 2021, in an amount not to exceed \$425,000 over the one-year term of the MOU, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
MEMORANDUM OF UNDERSTANDING
(Kern County Hospital Authority – Kern Health Systems)**

This Amendment No. 1 to the Memorandum of Understanding is made and entered into this 18th day of August, 2021, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Kern Health Systems, a county health authority (“KHS”).

RECITALS

(a) Authority and KHS have heretofore entered into a Memorandum of Understanding (Agt. #61320, dated December 11, 2020) (“MOU”), whereby KHS provides Translation Services KHS Members and patients of KMC, as such services are unavailable from Authority resources; and

(b) The parties agree to amend certain terms and conditions of the MOU as hereinafter set forth; and

(c) The Agreement is amended effective June 14, 2021;

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

1. Section 1, Responsibilities of KHS, paragraph A, shall be deleted in its entirety and replaced with the following:

“A. KHS will maintain Translation Services for KHS Members and will make such services available to KMC for the entire KMC patient population for the period commencing December 14, 2020, and continuing through December 13, 2021 (the “Term”).”

2. Section 3, Payment for Services, shall be deleted in its entirety and replaced with the following:

“3. **Payment for Services.**

A. **Payment Methodology.** KMC agrees to pay KHS an amount not to exceed 70 percent (70%) of utilization for Translation Services, until such time as the parties agree on a mutually acceptable method of accounting for such services. KHS will invoice KMC monthly. KMC agrees to pay KHS within 30 days of receipt of each invoice. To ensure proper tax reporting of the compensation paid under this MOU, KHS shall complete, execute and deliver to KMC an IRS Form W-9. All services are payable in arrears.

B. **Maximum Payable.** The maximum payable under this MOU shall not exceed \$425,000 over the Term of this MOU.”

3. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the MOU.
4. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
6. Except as provided herein, all other terms, conditions, and covenants of the MOU shall remain in full force and effect.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 1 as of the day and year first written above.

KERN HEALTH SYSTEMS

By: _____
Douglas A. Hayward
Chief Executive Officer

KERN COUNTY HOSPITAL AUTHORITY

By: _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By: _____
Russell V. Judd
Chief Executive Officer
Kern County Hospital Authority

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By: _____
Karen S. Barnes,
Vice President & General Counsel
Kern County Hospital Authority



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

August 18, 2021

Subject: Proposed SaaS Agreement with InTouch Technologies, Inc. dba Teladoc Health to provide telemedicine services for suspected stroke patients

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that the Board approve the proposed SaaS Agreement with InTouch Technologies, Inc. dba Teladoc Health for the purchase of a subscription to Teladoc Health Services, which includes equipment support, to provide for the rapid virtual examinations of suspected stroke patients. Teladoc Health Services provide advanced technology that better aligns with the strategic objectives of the organization and enhances the practitioner’s ability to deliver quality patient care, while also reducing the current cost to Kern Medical.

The maximum payable for this three-year agreement will not exceed \$116,760 as outlined below.

EQUIPMENT			
Description / SKU	Quantity	Per Unit Price	Extended Price
¹ Teladoc Health Mini with Backpack / 20-20331	2	\$15,950.00	\$31,900.00
Total			\$31,900.00

ONE-TIME SERVICES			
Description / SKU	Quantity	Per Unit Price	Extended Price
Network Configuration and Optimization (Xpress, Vici, Mini), Onsite / SV-20184	2	\$3,500.00	\$7,000.00
User Training, Per Hour - Remote / SV-20173	1	\$250.00	\$250.00
Shipping & Handling /	2	\$995.00	\$1,990.00
Solo Setup and Configuration / SV-20052	1	\$3,500.00	\$3,500.00
Standard IDM & Authentication / SV-20054	1	\$7,500.00	\$7,500.00
Total			\$20,240.00

Proposed SaaS Agreement with InTouch Technologies, Inc. dba Teladoc Health to provide telemedicine services for suspected stroke patients

Page 2 of 2

SUBSCRIPTION SERVICES				
Description / SKU	Quantity	Monthly Fee per Unit	Total Annual Fees	Term in Months
Managed Network Access / SV-20212	2	\$250.00	\$6,000.00	36
Select Support, Mini carts / SV-20254	2	\$275.00	\$6,600.00	36
Proactive Device Monitoring, 24/7 / SV-20213	2	\$200.00	\$4,800.00	36
Solo Premium User License / SW-20352	5	\$69.00	\$4,140.00	36
			Total	\$64,620

Therefore, it is recommended that your Board approve the proposed SaaS Agreement with InTouch Technologies, Inc. dba Teladoc Health for telehealth services for a term of three (3) years, effective August 18, 2021, not to exceed of \$116,760, and authorize the Chairman to sign.

SAAS AGREEMENT

This SaaS Agreement (this “**Agreement**”), effective as of August 18, 2021 (the “**Effective Date**”), is between **Kern County Hospital Authority**, a local unit of government, which owns and operates **Kern Medical Center**, with a place of business at 1700 Mount Vernon Avenue, Bakersfield, California 93306-4018 (“**Customer**”), and INTOUCH TECHNOLOGIES, INC. DBA **TELADOC HEALTH**, a Delaware corporation with a place of business at 2 Manhattanville Road, Purchase, NY 10577 (“**Teladoc**”). The parties agree as follows:

1. DEFINITIONS.

Unless otherwise expressly defined, all capitalized terms used in this Agreement and all exhibits hereto shall have the meanings set forth in this **Section 1**.

“**Affiliate**” of an entity means any corporation, company, partnership, joint venture or other entity directly or indirectly controlling, controlled by, or under direct or indirect common ownership or control with, another such entity, for so long as such control exists, and any entity over which Customer, directly or indirectly, exercises managerial control of health care delivery services. An entity shall be deemed to control another entity if the controlling entity: (i) owns, directly or indirectly, more than 50% of any class of voting securities or ownership interests of the controlled entity or possesses decision-making authority as to the controlled entity, whether through ownership of securities, ownership interests or otherwise, or (ii) has the ability to direct the affairs of an entity, whether as described above or by possession of a majority of the votes on the governance board of an entity, reserved powers or by contract, including a management, joint operating or similar agreement.

“**Client Software**” means any software provided to Customer on a licensed basis for installation on Customer’s or Customer’s End User’s equipment (including any software installed on or necessary for use of Equipment purchased from Teladoc). For the avoidance of doubt, Client Software does not include the Platform or any software provided to Customer on a software as a service or hosted basis.

“**Customer Data**” means all Customer and End User registration and account information, and all patient data, other personal data, transaction data and other data of Customer collected, stored, processed, or generated by or through the Platform in connection with providing the Platform to Customer which data includes any and all Protected Health Information (“**PHI**”) as defined by the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations, as amended (“**HIPAA**”).

“**Customer Information**” means all descriptions, specifications, materials, data and other information furnished to Teladoc by Customer in connection with Teladoc’s performance of its obligations hereunder.

“**Customer IP**” means Customer’s Intellectual Property.

“**Customer-Specific Extensions**” or “**CSE**” mean all customized software developed and written by or on behalf of Teladoc for Customer pursuant to one or more Statements

of Work by and between Customer and Teladoc, pursuant to this Agreement. Without limiting the foregoing, "Customer-Specific Extensions" also include any customized software and/or configuration that extends the Platform, using its APIs, that are developed by Customer or on behalf of Customer other than by Teladoc. "Customer-Specific Extensions" do not include the Platform or any software otherwise owned by Customer, except to the extent described in the preceding sentence.

"Customer Systems" means modems, servers, devices, software, network and equipment and ancillary services that are owned, controlled or procured by Customer, excluding all systems and services procured from Teladoc. Customer Systems shall include, at a minimum, secure means for connecting to the internet and commercial web browser applications capable of interfacing with the Platform ("**Minimal Requirements**").

"Deliverable" means any work product, including any Platform configuration and implementation, Customer-Specific Extensions, documentation or other materials, resulting directly from Professional Services which is specifically identified in a Statement of Work or applicable Work Order and delivered to Customer by Teladoc.

"Documentation" means, collectively, any user guide, and all other program descriptions, desk procedures, materials, documentation, specifications, training manuals, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describes the functional, operational and/or performance capabilities of the Equipment or the Platform related to use of the Equipment or the Platform provided by Teladoc to Customer and End Users in electronic or other form, including any updates thereto provided by Teladoc, from time to time.

"End User" is defined in **Section 2.2**.

"Equipment" means Teladoc's proprietary telehealth devices, if any, as specified on Exhibit A to be supplied by Teladoc to Customer.

"Harmful Code" means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner (i) the function of any computer, software, firmware, hardware, system or network or (ii) the security, integrity, confidentiality or use of any data (including, with respect to Teladoc, the Customer Data), or (b) prevent Customer or any End User from accessing or using the Platform as intended by this Agreement.

"Hospital System" means the acute care hospitals that make up Customer's affiliated health system, physician practices, and health plans as of the date hereof which are listed on Schedule A, attached hereto and made part hereof.

"Intellectual Property" means all of the following: (a) all inventions (whether patentable or un-patentable and whether or not reduced to practice), all improvements thereto; (b) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, web domain names, other source identifiers, and telephone numbers, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith; (c) all copyrightable works; (d) all mask works; (e) all trade secrets and confidential, technical, and business information (including ideas, research and

development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, pricing and cost information, and plans and proposals); (f) all computer software (including source code, executable code, data, databases, and related documentation); (g) all advertising and promotional materials; (h) all other proprietary materials and information; and (i) all copies and tangible embodiments thereof (in whatever form or medium).

“Intellectual Property Rights” mean all rights, title and interest in and to Intellectual Property in any jurisdiction throughout the world including, as applicable: (a) all patents, patent applications, and patent disclosures, together with all reissuances, continuations, divisions, continuations-in-part, revisions, extensions, and reexaminations thereof; (b) all copyrights, and all applications, registrations, and renewals in connection therewith; (c) all mask work applications, registrations, and renewals in connection therewith; and (d) all other proprietary rights.

“Platform” means Teladoc’s proprietary, provider telehealth platform, including the features and functions that are set forth in Exhibit C, hosted by Teladoc and made available to Customer over the internet. The Platform includes all modifications, updates, bug fixes, patches and Upgrades made thereto by Teladoc, but does not include any Customer-Specific Extensions.

“Platform Services” means services provided by Teladoc for the provision of the Platform for use by Customer subject to the terms of this Agreement, including the Services referenced in Exhibit A and listed in Exhibit D.

“Professional Services” means the services (such as, for example, development, consulting or other professional services) to be provided by Teladoc to Customer pursuant to the terms hereof and of one or more Statements of Work or applicable Work Order. For avoidance of doubt, Professional Services relate solely to work performed by Teladoc under one or more SOWs or WOs and are distinct from Platform Services (including those Platform Services identified in Exhibits A and D). Professional Services also may include ancillary services provided by Teladoc to Customer pursuant to a relevant order form.

“Services” means, collectively, the Platform Services and the Professional Services.

“Services Fees” means the fees for the Services as set forth in Exhibit A and any applicable SOW or Work Order.

“Statement of Work” or **“SOW”** means one or more separate written statements of work executed pursuant to the terms of this Agreement, each of which shall be (a) executed by authorized representatives of each party and (b) subject to and governed by the terms and conditions of this Agreement. Each Statement of Work will include: (a) a description of the Customer-Specific Extension, other Deliverable or other project and the Professional Services to be performed by Teladoc, (b) the delivery schedule, including a start date, implementation milestone dates, and the scheduled completion date, to the extent predetermined and (c) the fixed fees and/or rates and estimated fees payable by Customer. During the Term, the parties may execute one or more Statements of Work, pursuant to the terms of this Agreement.

“Teladoc Technology” means collectively, the Platform, the Platform Services, the Equipment, the Client Software, the Documentation and all other software, portal, algorithms, know-how, processes, methodologies, inventions, techniques and any other

technology used by Teladoc to offer the Services to Customer.

“Upgrades” means all revisions, improvements and enhancements to, and new features and functionality for the Services which Teladoc makes available provided that any Updates shall not diminish, or otherwise impair, the functionality, performance and features of the Platform.

2. PLATFORM AND OTHER SERVICES.

2.1 Provision of Platform; Rights to Use. Subject at all times to the terms and conditions of this Agreement, Teladoc hereby grants Customer, including End Users as defined in **Section 2.2**, a non-exclusive, non-transferable, non-sublicensable, limited right and license to access and use the Platform Services in and from the United States, during the Term (as hereinafter defined), solely for the benefit of Customer to provide and for the benefit of an End User to receive telehealth services via the Platform.

2.2 Providers and Patients. Subject to the terms and conditions of this Agreement, Customer may provide access to the Platform to Customer’s and its Affiliates’ healthcare providers and administrators affiliated with the Hospital System (collectively, **“Providers”**) and to Customer’s and its Affiliates’ patients and potential patients (collectively, **“Patients”**) for the provision and receipt of telehealth services via the Platform. Providers and Patients are referred to collectively as **“End Users.”** If Customer or a Customer Affiliate enters into a provider services agreement with Teladoc Physicians, PA, then Teladoc Physicians, PA and its contracted and employed providers will be deemed Providers.

2.3 Hospital System Expansion. The license and rights granted in **Sections 2.1** and **2.2** above are limited only to and do not extend beyond Customer’s Hospital System. If, at any time, Customer acquires, merges with or partners or otherwise affiliates with any additional hospital, health system, physician practice, and/or health plan and Customer desires to add such hospital, health system, physician practice or health plan to this Agreement, Teladoc shall have the option if applicable, upon each such occurrence, to adjust the Service Fees set forth in Exhibit A to account for the additional hospital or health system.

2.4 Access to the Platform Services.

2.4.1 Access Credentials. Teladoc will assign access credentials necessary to use the Platform to Customer. Customer may provide End Users with access credentials for access to certain services provided through the Platform. In the event it becomes required by a third-party provider of any Platform-application or feature, Customer acknowledges that End Users may be required to agree to a click-wrap license before accessing the Platform provided that the terms and conditions of such license will be mutually agreed upon by Customer and Teladoc and such click-wrap license shall not amend the terms and conditions of this Agreement between Customer and Teladoc. Customer and its End Users shall be responsible for maintaining the confidentiality and security of their respective unique access credentials. Customer accepts full responsibility for all activity conducted by End Users through any credentials controlled and released by Customer and hereby releases Teladoc from any and all liability concerning such activity except to the extent caused by Teladoc. Teladoc accepts full responsibility for all activity conducted through credentials directly controlled by Teladoc and hereby releases Customer from any

and all liability concerning such activity except to the extent caused by Teladoc. Each party shall promptly notify the other whenever it knows of, or has reason to suspect, misuse of the Platform.

2.4.2 End User Access.

2.4.2.1 Platform Access. Customer shall be solely responsible for developing its own policies and procedures, disclaimers, clinical guidelines, terms of use, consents, authorizations and for providing all required notices to End Users (collectively "**Customer Policies**"), as well as for establishing and requiring End User acceptance of all Customer Policies. Teladoc shall have no liability whatsoever with regard to Customer's failure in any respect with regard to any Customer Policies or for Customer's enforcement thereof. Teladoc's sole obligation with regard to the foregoing is to load Customer Policies within the Platform as directed by Customer. Customer's Policies shall not create any additional liability or obligation on the part of Teladoc, without Teladoc's express written consent. In the event Teladoc provides to Customer a draft customer policy or template for any customer policy (either is a "**Template**"), Teladoc makes no representation or warranty as to the sufficiency, fitness for a particular purpose or enforceability of such Template. As material consideration for Teladoc's providing such Template, Customer accepts sole responsibility for evaluating the adequacy of such Template for Customer's own needs and accepts all liability for any of Customer's use of such Template.

2.4.2.2 Telephone Call Center Access. To the extent that Teladoc provides call center services Teladoc (as will be set forth in Exhibit D), then Customer shall be solely responsible for developing its own call-center scripts and Customer Policies applicable to the call center Services provided by Teladoc, in compliance with applicable laws, and Teladoc shall have no liability whatsoever with regard to Customer's failure in any respect with regard to development of any of the foregoing scripts and Customer Policies or their failure to comply with applicable laws. Teladoc's sole obligation with regard to the foregoing is to engage with End Users pursuant to such scripts and Customer Policies provided by Customer to Teladoc and to otherwise provide call center services in compliance with applicable privacy laws.

2.5 Client Software. To the extent Teladoc makes available any Client Software for use by Customer in connection with the Equipment or Services, Teladoc grants to Customer during the Term of this Agreement a non-exclusive, non-transferable, non-sublicensable limited right and license to use the Client Software in the manner authorized by Teladoc solely in connection with the Equipment and Services.

2.6 Limitations. Teladoc will not be responsible or liable for any failure of the Platform resulting from or attributable to: (a) Customer's Systems; (b) network, telecommunications or other service or equipment failures outside of Teladoc's facilities or control; or (c) Customer's negligence.

2.7 Branding. The Platform will be provided to Customer on a white label basis and may be configured to feature Customer's branding preferences, as approved in advance by Teladoc, which approval will not be unreasonably withheld or conditioned. In addition, the Platform may feature "*Powered by Teladoc*", "*Powered by InTouch*" or similar branding, for example, in the lower right-hand corner of each screen of the Platform.

2.8 Customer Systems. Customer shall obtain and operate all Customer Systems needed to connect to, access or otherwise use the Platform, and provide all corresponding backup, recovery and maintenance services corresponding to such Customer Systems. It shall solely be Customer's responsibility to ensure that all Customer Systems are compatible with the Minimal Requirements and comply with all related configurations and specifications set forth in any Documentation. Customer shall maintain the version-currency, integrity and security of Customer Systems (physical, electronic and otherwise) necessary to meet the Minimal Requirements.

2.9 Operability. Teladoc will use commercially reasonable efforts to maintain the Platform as operational at all times, subject to down-times resulting from scheduled maintenance, repairs and Upgrades as set forth in Exhibit B.

2.10 Documentation. Subject to all terms and conditions in this Agreement, Teladoc grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license for Customer and the End Users to use any Documentation provided solely in connection with its authorized use of the Platform. Customer may copy the Documentation as reasonably needed to support its authorized use of the Platform, provided that all such copies retain the proprietary legends contained on or in the original Documentation.

2.11 Upgrades. Teladoc may, from time to time, with reasonable advance notice, provide Upgrades to the Platform during the term of the Agreement.

2.12 Customer's Employee Services. If Exhibit D-2 is attached hereto, then Teladoc shall perform the Services set forth in Exhibit D-2 to support use of the Platform by Customer's employees and eligible dependents.

2.13 Professional Services. Prior to performing any Professional Services, the Parties will agree on the scope, duration and fees for such Professional Services and document them in mutually agreeable Statements of Work or Work Orders. Teladoc will use commercially reasonable efforts to provide and complete all Professional Services in accordance with the specifications and timetables set forth in this Agreement and all applicable Statements of Work and Work Orders. Client shall provide all necessary information, access, workspace, computing resources, and other services and support materials as reasonably required by Teladoc to perform the Professional Services in a timely manner. Any changes to the scope of the Professional Services shall be documented in writing (a "**Change Order**"). Until a Change Order has been signed by both parties, it shall be of no effect and the Parties shall perform under the existing Statement of Work.

2.14 Equipment (as applicable).

2.14.1 Lease, Rent or Purchase Terms. Customer may lease, rent or purchase any Equipment in Customer's sole discretion; provided, that if Customer intends to lease the Equipment, Customer will be solely responsible for complying with the requirements of the equipment finance provider chosen by Teladoc, or Teladoc itself if Teladoc is to provide financing. To the extent Customer intends to lease the Equipment from an equipment finance provider, Customer will be solely responsible for entering into a lease agreement with the equipment finance provider chosen by Teladoc.

2.14.2 Equipment Purchase. Any purchase of Equipment by Customer will be subject to the Equipment Purchase Terms and Conditions attached hereto as Exhibit F.

2.14.3 Customer Support for Equipment. During the Term, Teladoc will provide customer support for the Equipment in accordance with the customer service provisions attached hereto as Exhibit B.

3. CUSTOMER SUPPORT.

3.1 Teladoc Obligations. Subject to payment by Customer of the Service Fees specified in Exhibit A, Teladoc will provide the following support with respect to the Platform:

- a. General telephone help desk support for all operational and technical matters will be available for Customer and End Users on a 24 x 7 x 365 basis.
- b. Technical Issue resolution support service response times are listed in Exhibit B.

3.2 Customer Obligations. In addition to its other obligations hereunder, Customer shall do (or cause to exist) the following:

- a. Identify one (1) or more customer support representatives in writing to Teladoc who shall be the sole contacts for the coordination and receipt of the support services, and such persons shall be trained and knowledgeable about how the Platform is being used. Customer shall be responsible for notifying Teladoc of any changes to the designated representative.
- b. Provide an email address or addresses for electronic mail communications with Teladoc.
- c. Provide reasonable supporting data (including written descriptions of problems) as requested by Teladoc, and to otherwise aid Teladoc in identifying and correcting reported problems.

4. PROPRIETARY RIGHTS.

4.1 Platform and Documentation. Teladoc shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Teladoc Technology. Except with respect to the sale of any Equipment hereunder, the transactions and other matters set forth in this Agreement are not intended to constitute, and are not, a sale of any tangible or intangible property, and this Agreement is not intended to, and does not, convey to Customer any right of ownership in or related to the Teladoc Technology or the Intellectual Property Rights now or hereinafter owned by Teladoc.

4.2 Deliverables. Unless otherwise agreed by the parties in an applicable Statement of Work, Teladoc shall own all right, title and interest (including all Intellectual Property Rights) in and to the Deliverables, exclusive of any Customer Information and Customer Data. Teladoc agrees to grant Customer a perpetual, nonexclusive, nontransferable (except to its Affiliates within the Hospital System) right and license, (without the right to

sublicense) to use such Deliverables internally in the United States in connection with Customer's and its Affiliates' authorized use of the Platform and to permit End Users to use the Deliverables in accordance with and subject to any other rights or restrictions set forth in the Statement of Work and this Agreement. Unless otherwise set forth in any applicable SOW, Customer hereby grants Teladoc a non-exclusive, perpetual, world-wide royalty free license to use any Customer Information that is provided to Teladoc by Customer specifically in support of or related to Teladoc's performance of Professional Services. Except for the limited rights and licenses expressly granted hereunder concerning the Deliverables, no other license is granted, no other use is permitted, and Teladoc (and its licensors) shall retain all right, title and interest (including all Intellectual Property Rights) in and to all Deliverables. The foregoing shall not be construed to convey ownership to Teladoc of any Customer Information or Customer Data incorporated into any Deliverable and under all circumstances Customer shall retain ownership of such Customer Information and Customer Data.

4.3 Pre-Existing Intellectual Property. Each party shall retain ownership of all right, title and interest in and to any Intellectual Property and Intellectual Property Rights therein it owned or had an interest in prior to the Effective Date of this Agreement or which is developed outside of this Agreement (the "**Pre-existing Intellectual Property**"). Unless expressly stated herein, nothing in this Agreement shall be deemed to imply a license or transfer of ownership of either party's Pre-existing Intellectual Property to the other party or any third party.

4.4 Customer IP and Customer Information. Customer represents, and warrants that it owns all right, title and interest, or possesses sufficient license rights, in and to the Customer IP, Customer Data and the Customer Information as may be necessary to authorize the use thereof contemplated by this Agreement. Customer agrees, as between the parties, that Customer bears all responsibility and liability for the accuracy, completeness, possession and use of Customer IP, Customer Data and Customer Information in connection with the Services.

4.5 Customer Data. As between the parties, Customer shall own all Customer Data. Teladoc shall not disclose to third parties (other than its agents or contractors, subject to comparable obligations of confidentiality to those herein) or use any Customer Data, except as reasonably necessary to provide the Platform and the Services to Customer or to comply with or as required by any legal, regulatory, law enforcement inquiry or investigation. Customer hereby grants to Teladoc (including for use by its agents and contractors) a nonexclusive, royalty-free right and license during the Term hereof to use the Customer Data solely for the purpose of providing the Platform and Services. In addition, Teladoc may use, and Customer hereby grants Teladoc a non-exclusive, perpetual, world-wide royalty free license to use, Customer's Data, including de-identified patient data, aggregated de-identified patient data and de-identified Platform usage data for Teladoc's internal research, analysis and product development, and may publish reports and marketing materials based on such de-identified data. Subject to the preceding sentence, Teladoc will not sell or disclose Customer's patient data or aggregated patient data to a third party for exploitation or commercialization by such third party (or other parties) without Customer's prior written consent. For clarification, the previous sentence does not preclude Teladoc from licensing or selling software and related services to its healthcare customers based on Teladoc's use of Customer's and other customers' patient data or aggregated patient data for Teladoc's internal research, analysis and product development, provided that Teladoc must adhere to its obligations

for use of PHI as provided in the Business Associate Agreement and elsewhere in this Agreement.

4.6 General Learning. Customer and Teladoc agree that each party is free to reuse all generalized knowledge, experience, know-how and technologies (including ideas, concepts, processes and techniques) related to or acquired during performance of the Services or provision of the Platform (including without limitation, that which Teladoc could have acquired performing the same or similar services for another customer or which Customer could have acquired using another vendor's platform or service).

4.7 Restrictions. Except as expressly permitted in this Agreement, Customer shall not, directly or indirectly: (a) use any Teladoc Confidential Information to create any software or documentation that contains features or functionality that is similar to the Platform; (b) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code or underlying ideas, algorithms or organization of the Platform (except and only to the extent these restrictions are expressly prohibited by applicable law); (c) encumber, sublicense, transfer, sell, export, re-export, distribute or otherwise commercially exploit the Platform for the benefit of any third party (e.g., any time-sharing or service bureau arrangement); (d) copy, create derivative works of or otherwise modify the Platform; (e) use the Platform in a manner that unreasonably interferes with Teladoc's other customer's use thereof; or (f) permit any third party to do any of the foregoing. Customer will promptly notify Teladoc in writing of any unauthorized use, reproduction or distribution of the Platform that it becomes aware of.

4.8 No Implied License. Except for the limited rights and licenses expressly granted hereunder, no other license is granted, no other use is permitted and Teladoc (and its licensors) hereby reserve all right, title and interest in and to the Services, the Platform and the Documentation (including all Intellectual Property Rights embodied in either). Customer agrees not to take any action inconsistent with such title and ownership.

4.9 Markings. Customer shall not obscure, alter or remove any patent or other proprietary or legal notice affixed to or contained on or in the Platform (including any on-screen notice) or in approved informational, descriptive, marketing or promotional materials. The Teladoc and Intouch names and logos are trademarks of Teladoc and no right or license is granted to use them, other than as expressly contemplated in this Agreement.

5. CONFIDENTIALITY.

5.1 Scope. The term "**Confidential Information**" means all trade secrets, know-how, inventions, developments, software and other financial, business or technical information that are disclosed by or for a party in relation to this Agreement (including all copies, analyses and derivatives thereof) and which are marked or otherwise identified as proprietary or confidential at the time of disclosure, or which by their nature would be understood by a reasonable person to be proprietary or confidential. Confidential Information shall not include any information that the receiving party can demonstrate is (a) rightfully furnished to it without restriction by a third party without breach of any obligation to the disclosing party, (b) generally available to the public without breach of this Agreement or (c) independently developed by it without reliance on such information. Other than portions of the Platform and/or the Services generally made available to end users, including End Users, all Documentation, the Platform and Service

Fee information are deemed to be Teladoc's Confidential Information. All Customer Data, Customer Information and Customer IP are deemed to be Customer's Confidential Information. The restrictions herein will not prevent a party from complying with any law, regulation, court order or other legal requirement that purports to compel disclosure of any Confidential Information. To the extent permitted by applicable law, the receiving party will promptly notify the disclosing party upon learning of any such legal requirement and cooperate with the disclosing party at disclosing party's expense in the exercise of its right to protect the confidentiality of the Confidential Information before any tribunal or governmental agency. Teledoc is aware that Customer 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.

5.2 Duty of Confidentiality. Except for the specific rights granted by this Agreement, the receiving party shall not possess, access, use or disclose any of the other party's Confidential Information for any other purpose than performing its obligations or exercising its rights under the Agreement, or as otherwise authorized in writing by the disclosing party. The receiving party shall limit access to Confidential Information of the disclosing party to only those of its employees, agents and contractors having a need to know in connection with this Agreement or the provision or receipt of the Services, as applicable. The receiving party shall advise all of its employees, agents and contractors who may be exposed to the Confidential Information of the disclosing party of their obligations to keep such information confidential in accordance with this Agreement. The receiving party shall use reasonable care to protect the other party's Confidential Information, but in no event less care than it employs in protecting its own Confidential Information. Each party shall be responsible for any breach of confidentiality by its employees, agents, and contractors. Promptly after any termination of this Agreement, the receiving party shall return all of the other's tangible Confidential Information, or only upon written request, permanently erase all of the disclosing party's Confidential Information from any storage media and destroy all information, records and materials developed therefrom, subject to the provisions of **Section 10.4**, except either party may keep one single instance of any Confidential Information required to be maintained by applicable rule, law or regulation, or required for record retention or audit purposes, subject to the continuation of such party's confidentiality obligations hereunder and shall certify in writing to the disclosing party the destruction and/or return of any and all Confidential Information of the disclosing party, whether in hard copy or electronic format and whether standalone or included in any other materials or documents, in such receiving party's possession, except to the extent that through the exercise of reasonable commercial efforts the same cannot be removed from databases or records that are not maintained specific to the disclosing party.

5.3 Data Access. Customer shall have access to data and records in accordance with Documentation and Platform functionality. During the Term, Customer may request copies of its data files at any time up to four (4) times in any twelve (12) month period for no additional charge. Such data will be provided promptly in a secure manner (secure FTP or encrypted media) and in a generally available electronic, non-proprietary in an industry-standard format mutually agreeable to both Parties. In addition, Teladoc will provide the transition assistance set forth in **Section 10.4**.

5.4 Business Associate Agreement. The Parties shall have the additional obligations and responsibilities as set forth in the mutually agreed upon Business Associate Agreement attached hereto and made part hereof as Exhibit E. Notwithstanding any contrary terms that may be contained in this Agreement, the terms set forth in the Business Associate Agreement shall govern the handling (including permitted uses and disclosures) of that portion of Customer Data that is PHI.

6. PAYMENTS.

6.1 Fees. Customer agrees to pay Teladoc the fees for the Services in the amounts and at the times specified in Exhibit A attached hereto (“**Service Fees**”). If Customer fails to pay the Service Fees (except those in a “Good Faith Dispute” (defined in **Section 6.3**) as specified by written notice of dispute) within the time periods specified in Exhibit A, then, without limiting any of its other remedies under this Agreement or at law, Teladoc may suspend provision of the Services thirty (30) days after providing written notice of the intention to suspend or terminate service and access to the Platform to Customer and its End Users until such time as those payments are made, subject to the provisions of **Section 6.3**. Unless otherwise expressly stated herein, all fees payable under this Agreement are non-cancellable and non-refundable.

6.2 Expenses. Customer shall reimburse Teladoc for travel expenses and other out-of-pocket expenses incurred by Teladoc in the performance of Professional Services as agreed to in any SOW or Work Order and in accordance with the U.S. General Services Administration.

6.3 Payment Terms. Unless specified otherwise, all Service Fees shall be paid in accordance with Exhibit A and any other amounts due hereunder shall be paid within thirty (30) days after the date of receipt of the invoice in US dollars at Teladoc’s address for notices (or, at its option, to an account specified by Teladoc). Customer agrees to reimburse Teladoc for all costs (including attorneys’ fees) incurred in collecting late payments. In the event of Teladoc’s decision to suspend Services under any portion of this Agreement, Teladoc agrees to continue to provide Customer with read-only access to all of Customer’s Data for ninety (90) days or until Customer has earlier completed the export and migration of Customer Data to another platform.

6.4 Good Faith Dispute. Customer may, in good faith, dispute any invoice or any portion thereof for any fees other than Annual Platform Fees and General Implementation Fee (both as set forth in Exhibit A) in accordance with this Section and the failure to pay such disputed amount during the pendency of a good faith dispute shall not constitute a material breach of this Agreement. Accordingly, Customer will not be assessed a late payment or interest charge on such amounts withheld, and Teladoc shall continue performing its obligations in accordance with this Agreement notwithstanding any such dispute or actual or alleged nonpayment that is the subject of the dispute, pending its resolution in accordance with the provisions herein. Customer shall provide Teladoc a detailed written explanation of the basis for disputing in good faith the amounts claimed due by Teladoc within twenty (20) days of receiving the invoice containing disputed charges. Upon receipt of any notice of disputed fees, Teladoc shall promptly and diligently cooperate with Customer to resolve the disputed amounts.

6.5 Taxes. All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments

(including without limitation, sales taxes, use taxes and value added taxes), and Customer agrees to bear and be responsible for and shall indemnify Teladoc from the payment of all such charges, excluding taxes based upon Teladoc's net income.

7. WARRANTY AND DISCLAIMERS.

7.1 Representations and Warranties. Each party represents and warrants to the other party that: (a) it is duly organized and validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation; (b) it has full corporate power and authority to execute and deliver this Agreement and perform its obligations hereunder and to grant the rights granted and intended to be granted hereunder; (c) this Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms (except as such enforcement may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, or similar laws related to or limiting creditors' rights generally or general principles of equity); and (d) the execution and delivery of this Agreement and all other instruments and documents required to be executed pursuant hereto, and the consummation of the transactions contemplated hereby, do not and shall not conflict with or result in a breach of any provision of its organizational documents.

7.2 Additional Teladoc Representations, Warranties and Covenants. Teladoc represents, warrants and covenants to Customer, during the Term of this Agreement, that (a) Teladoc will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement; (b) Teladoc will not knowingly introduce, or permit any person under its direction or control to knowingly introduce, any Harmful Code into the Customer Data or the Customer Systems; and (c) Teladoc is not under, and shall not during the term hereof enter into or be under, any obligation, covenant or restriction which would or might operate to prevent or restrict Teladoc from performing Teladoc's obligations under this Agreement, or which may give rise to any conflict of interest between Teladoc and Customer.

7.3 Equipment Warranty. Teladoc warrants that the Equipment will be free from defects in materials and workmanship, under normal use and service, for twelve (12) months from the date the Equipment is shipped by Teladoc to Customer (the "**Standard Equipment Warranty**"). The Standard Equipment Warranty shall apply only to Teladoc manufactured Equipment. Teladoc's sole obligation ("**Essential Support**") under this express warranty shall be, at Teladoc's option and expense: (i) to repair the defective Equipment or part; (ii) to deliver to Customer an equivalent unit of Equipment or part to replace the defective item, or if neither of the two foregoing options is reasonably available, Teladoc may, in its sole discretion; (iii) refund to Customer the purchase price paid for the defective Equipment. Customer may elect to purchase extended warranty and customer support at prices and terms to be separately agreed upon in a relevant SOW or Order Form.

7.4 EXCEPT AS SPECIFICALLY STATED HEREIN, ALL SERVICES, THE PLATFORM, THE EQUIPMENT AND ANY TEMPLATES ARE PROVIDED WITHOUT WARRANTY OF ANY KIND. TELADOC DOES NOT WARRANT THAT: THE TELADOC TECHNOLOGY, THE SERVICES, THE PLATFORM, THE EQUIPMENT OR THE TEMPLATES WILL MEET CUSTOMER'S REQUIREMENTS; OPERATION OF THE SERVICES OR THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE; OR

ANY ISSUES WHICH MAY BE CONTAINED IN THE SERVICES OR THE PLATFORM CAN OR WILL BE FIXED. EXCEPT AS SPECIFICALLY STATED HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, TELADOC HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PLATFORM, SERVICES AND TEMPLATES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, QUIET ENJOYMENT, ACCURACY, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. TELADOC MAKES NO, AND HEREBY DISCLAIMS, ANY WARRANTIES REGARDING ANY THIRD-PARTY SOFTWARE PROVIDED AS PART OF THE SERVICES.

8. INDEMNIFICATION.

8.1 By Teladoc.

a. Infringement. Teladoc agrees to (a) defend, indemnify and hold harmless Customer against any claim by a third party that the Equipment, the Platform and/or the Services infringe a valid US patent or any copyright, or misappropriate any trade secret of such third party, except to the extent any such infringement or misappropriation relates to the Customer IP, Customer Information or Customer Data, and (b) indemnify Customer for settlement amounts and damages, liabilities, penalties, costs and expenses (including reasonable attorneys' fees) finally awarded and arising out of such claim. If the Platform becomes or, in Teladoc's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Teladoc may, at its option (i) obtain for Customer the right to continue using the allegedly infringing Equipment, Platform or portion thereof, as applicable, or (ii) replace or modify the allegedly infringing Equipment, Platform or portion thereof, as applicable, so that it becomes non-infringing without substantially compromising its principal functions. If (i) and (ii) are not reasonably available to Teladoc, then it may (iii) terminate this Agreement upon written notice to Customer and, after termination of Customer's use of the Platform and return of the Equipment, refund to Customer all prorated pre-paid Platform Fees for the Platform and a pro-rated portion of the price paid for the Equipment, based upon a linear monthly depreciation over a [three (3) year] useful life.

b. Entire Liability. The foregoing states the entire liability of Teladoc, and Customer's exclusive remedy, with respect to any actual or alleged violation of Intellectual Property Rights by the Platform or any part thereof or by its use or operation.

c. Exclusions. Teladoc shall have no liability or obligation to Customer hereunder with respect to any claim based upon: (i) any use of the Equipment or Platform not strictly in accordance with the Documentation or this Agreement; (ii) use of the Equipment or Platform in an application or environment or on a platform or with devices for which it was not designed; (iii) alterations, combinations or enhancements of the Equipment or Platform not created or approved in writing by, or made at the direction of, Teladoc; (iv) Customer's continuing allegedly infringing activity after being notified by Teladoc thereof, or its continuing use of any version of the Equipment or Platform after being provided modifications at no additional charge that would have avoided the alleged

infringement; (v); or (vi) any Intellectual Property Rights in which Customer have an interest.

8.2 By Customer. Customer agrees to: (a) defend and hold harmless Teladoc against any claim by a third party that results from or arises out of (i) any permitted use of Customer IP, (ii) any claim excluded under **Section 8.1.c**, (iii) Customer breach of **Section 11.5 (Compliance with Laws)** or (iv) Customer Policies and Teladoc's use thereof on behalf of Customer and (b) indemnify Teladoc for settlement amounts and damages, liabilities, penalties, costs and expenses (including reasonable attorneys' fees) finally awarded and arising out of such claim stemming from this Section 8.2.

8.2.1 Liability of Customer. The liabilities or obligations of Customer with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Customer and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. California Health and Safety Code Section 101853(g).

8.3 Procedure. In claiming any indemnification under this **Section 8**, the indemnified party shall promptly provide the indemnifying party with notice of any claim that the indemnified party believes is within the scope of the obligation to indemnify. The indemnified party may, at its own expense, assist in the defense if it so chooses, but the indemnifying party shall have sole control of the defense and all negotiations relative to the settlement of any such claim. The indemnified party will provide the indemnifying party with reasonable assistance, at the indemnifying party's expense, in the defense, negotiations and settlement of any claims. Any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

8.4 Interpretation. For purposes of this **Section 8** only, references to "Teladoc" or "Customer," when such party is the recipient/beneficiary of indemnification by the other, shall also be deemed to include such indemnified party's officers, directors, employees, contractors and Affiliates (though not third-party insurance agents or brokers, as such terms are commonly understood) and their officers, directors, employees, and contractors.

9. LIMITATION OF LIABILITY.

EXCEPT TO THE EXTENT THAT ANY EXCLUSION OR LIMITATION OF LIABILITY IS VOID, PROHIBITED OR UNENFORCEABLE BY APPLICABLE LAW, OR IN THE CASE OF (I) BREACH OF CONFIDENTIALITY (**SECTION 5**), (II) BREACH OF ANY PROPRIETARY RIGHT (**SECTION 4**), (III) EACH PARTY'S INDEMNIFICATION OBLIGATIONS (**SECTION 8**), (IV) GROSS NEGLIGENCE, OR WILLFUL OR INTENTIONAL MISCONDUCT OR OMISSION, OR (V) A THIRD PARTY CLAIM, IN NO EVENT SHALL EITHER PARTY BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL, (B) LOSS OF DATA, LOSS OR INTERRUPTION OF USE OR SERVICE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (D) AGGREGATE DAMAGES IN EXCESS OF TWO (2) TIMES THE FEES PAID TO

TELADOC BY CUSTOMER HEREUNDER IN THE RELEVANT YEAR, EXCLUDING ANY ONE-TIME OR HARDWARE FEES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

10. TERM AND TERMINATION.

10.1 Term. Unless otherwise terminated as expressly provided herein, this Agreement shall commence on the Effective Date and continue in effect for three (3) years (“**Initial Term**”). The Agreement will automatically renew for additional terms of one (1) year each at the end of the Initial Term (“**Renewal Term**”) and each Renewal Term thereafter (collectively, “**Term**”). Notwithstanding the above, this Agreement shall continue in perpetuity until the last Customer subscription term in a relevant Order Form or SOW expires. Unless terminated earlier in accordance with the termination rights set forth Section 10.2, this Agreement shall commence on the Effective Date and remain in effect until all subscriptions in a relevant Order Form have expired or have been terminated. Each Order form shall specify its duration.

10.2 Subscription Renewal. Unless otherwise set forth in the applicable Order Form, subscriptions for Services will renew for a subsequent renewal term of twelve (12) months (“Subscription Renewal Term”) unless either party notifies the other party in writing at least thirty (30) days prior to the end of the then-current subscription term, that it chooses not to renew.

10.3 Cause. This Agreement may be earlier terminated by either party (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) days (ten (10) business days in the case of any non-payment other than a Good Faith Dispute, in which case **Section 6.3** shall apply) after receiving written notice of such breach from the non-breaching party, or (b) immediately upon written notice, if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within ninety (90) days, or the other party, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course. **Non-appropriation.** Customer 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, Customer will be released from any further financial obligation to Teladoc, 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. Teladoc will be given 30 days' prior written notice in the event that Customer requires such an action

10.4 Effects of Termination. Upon expiration or termination of this Agreement for any reason, all rights, obligations and licenses of the parties hereunder shall cease, except that (a) Customer's liability to pay for Services performed (and non-cancelable expenses incurred) prior to the termination date shall not be extinguished, and shall become due and payable on the termination date, (b) all other obligations that accrued prior to the effective date of termination and remedies for breach of this Agreement shall survive any termination, and (c) subject to the provisions of **Section 10.4**, the parties shall return or destroy all Confidential Information of the other party and any and all derivatives thereof.

10.5 Transition Assistance. In the event of termination of this Agreement for any reason, Teladoc shall provide Customer, at no charge to Customer for a period of one-hundred and twenty (120) days, with read-only access to all Customer Data, including the ability for Customer to download and/or transfer such Customer Data in a reasonable and mutually agreed upon format to a separate software product selected by Customer, provided that such separate software product is compatible with such data format. During such one hundred twenty (120) day period, Teladoc shall also provide, upon request, reasonable transition assistance and cooperation ("**Transition Services**") to facilitate the transfer of all Customer Data and Customer's timely transition to another service provider. All Transition Services shall be billed by Teladoc and paid by Customer at the time and materials (T&M) rates set forth on Exhibit A, or at Teladoc's standard time and materials (T&M) rates if such rates are not set forth on Exhibit A.

10.6 Survival. Notwithstanding any statement to the contrary contained herein, the following Sections shall survive any termination or expiration of the Agreement: **Section 1 (Definitions)**, **Section 4 (Proprietary Rights)**; **Section 5 (Confidentiality)** (excluding the first three (3) sentences of **Section 5.3**); **Section 6 (Payments)** (only with respect to Customer's payment obligations thereunder); **Section 7 (Warranty and Disclaimers)**; **Section 8 (Indemnification)**; **Section 9 (Limitation of Liability)**; **Section 10.3 (Effects of Termination)**; **Section 10.4 (Transition Assistance)** (for one hundred twenty days after termination); **Section 11 (General Provisions)**; this **Section 10.5 (Survival)**; **Section 11.1 (Entire Agreement)**; **Section 11.3 (Governing Law)**; **Section 11.4 (Local Laws and Export Control)**; **Section 11.5 (Compliance with Laws)**; **Section 11.6 (Access to Records)**; **Section 11.7 (No Exclusion/Debarment)** (only as to the indemnification provisions as set forth therein); **Section 11.9 (Relief)**; **Section 11.10 (Notices)**; **Section 11.14 (No Interference)** (Only for one year after termination or expiration); **Section 11.15 (Consideration)**; **Section 11.16 (Force Majeure)** (until completion of Transition Assistance); and **Section 11.17 (Insurance)** (as set forth in **Section 11.17d**).

11. GENERAL PROVISIONS.

11.1 Entire Agreement. This Agreement together with all exhibits, attachments and schedules attached hereto and/or incorporated herein, constitutes the entire agreement between the parties with regard to, and supersedes all prior negotiations, understandings or agreements (oral or written) between the parties relating to, the subject matter of this Agreement (and all past dealing or industry custom) with respect to the subject matter herein. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of this Agreement by facsimile, PDF, or other electronic signature shall have the same force and effect as execution of an original and shall be deemed an original and valid signature. No changes, modifications or waivers may be made to this Agreement unless in writing and signed by both parties. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights. Except as specifically provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

11.2 Publicity. Customer hereby grants Teladoc a royalty free, worldwide license to use Customer's tradename, trademark and approved logo on Teladoc's standard sales-deck and customer list and to use Customer's tradename during Teladoc's earnings calls solely to indicate, during the Term, Customer's status as a customer of Teladoc without other indications of endorsement.

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

11.4 Local Laws and Export Control. None of the Customer Data shall be transferred or otherwise exported or re-exported to any other person outside of the United States by Teladoc. Customer shall be solely liable for any export or use of the Platform by Customer or any End User outside of the United States.

11.5 Compliance with Laws. Each party is responsible for compliance with, and shall comply with, all applicable federal, state and local laws, rules and regulations, including, without limitation, those relating to environmental matters, wages, hours and conditions of employment, discrimination, and occupational health/safety ("**Applicable Law**") related to the exercise of its rights and performance of its obligations under the Agreement. Each party shall take all measures necessary to promptly remedy any violation(s) of Applicable Law for which it is responsible and shall promptly notify the other party of any known violation(s) and remediation thereof. Customer shall obtain at its own cost any and all necessary consents, licenses, approvals and permits required for the provision of telemedicine services via the Platform. Teladoc shall obtain at its own cost any and all necessary consents, licenses, approvals and permits required for the provision of the Services to Customer, exclusive of those required for operation of, or the provision of telemedicine services through, the Platform by Customer.

11.6 Access to Records. If required by 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the termination of this Agreement, Teladoc shall make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the services provided by Teladoc under this Agreement. If Teladoc carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a twelve (12) month period, such subcontract shall contain the same requirements. This provision shall survive termination or expiration of this Agreement.

11.7 No Exclusion/Debarment. Teladoc warrants that neither it nor its principals or employees are, or have been, excluded, debarred, suspended, proposed for debarment, or declared ineligible from participation in any federally funded program ("**Exclusion**"). Teladoc shall immediately notify Customer of any threatened or actual Exclusion. If Teladoc is so debarred, suspended, or excluded, this Agreement shall immediately and automatically terminate. Teladoc shall indemnify and defend Customer against all actions, claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, arising directly or indirectly out of any Exclusion. The indemnification terms of this provision shall survive termination or expiration of this Agreement.

11.8 Fair Market Value; Kickbacks. The parties acknowledge that the Service Fees payable hereunder constitute fair market value for the rights granted hereunder, and that no payments hereunder are intended to induce referrals or to exert influence in any manner over the judgment of any person or party with respect to referrals or the creation of relationships of any nature whatsoever.

11.9 Relief. Each party agrees that, in the event of any breach or threatened breach of **Section 4** or **5**, the non-breaching party may suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to seek injunctive and other equitable remedies to prevent or restrain, temporarily or permanently, such breach or threatened breach, without the necessity of posting any bond or surety. Such remedies shall be in addition to any other remedy that the non-breaching party may have at law or in equity.

11.10 Notices. All notices under this Agreement will be in writing, in English and delivered to the parties at their respective addresses first stated above or at such other address designated by written notice, with all notices to (a) Customer: Attn: Chief Executive Officer, with a copy to (which shall not constitute notice): Attn: General Counsel, at the same address, and (b) Teladoc, Attn: Chief Legal Officer. Notices will be deemed to have been duly given when received, if personally delivered or; when receipt is electronically confirmed, if transmitted by e-mail; when receipt is confirmed by reply, if sent for next business day delivery by recognized overnight delivery service (receipt requested); or five (5) days after mailing, if sent by certified or registered mail, postage pre-paid, return receipt requested.

11.12 Assignment, Delegation, Change in Control.

a. Neither party may assign or delegate (whether by contract, operation of law or otherwise) any of its rights or duties hereunder, respectively, without the prior, written consent of the other party. Any such purported assignment or delegation in violation of provisions of this **Section 11.12** shall be null and void *ab initio*. No permitted assignment or delegation shall relieve the assigning or delegating party of its obligations hereunder, but instead such assignee or delegee shall also be bound by, and subject to, the terms and conditions of this Agreement. The foregoing notwithstanding, no provision of this **Section 11.12** or otherwise shall prevent either Party from (i) subcontracting in connection with its performance of Services, as customary, or (ii) assigning this Agreement or delegating its obligations hereunder to an Affiliate or future Affiliate or in connection with the transfer or sale of all or substantially all of its business related to this Agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement. Any purported assignment in violation of this section shall be void and of no effect.

b. Upon any Change in Control (as hereinafter defined) that occurs with respect to Customer, unless Teladoc has consented in writing to such Change in Control, Teladoc shall have the right to terminate this Agreement effective thirty (30) days following notice of such termination to Customer, any provision hereof to the contrary notwithstanding. As used herein, "**Change in Control**" means the acquisition of more than 50% of the (i) outstanding equity, (ii) voting rights or (iii)

assets of Customer or any parent of Customer by any entity, person or group of persons.

11.13 Independent Contractors. The parties shall be independent contractors in their performance under this Agreement, and nothing contained herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

11.14 No Interference. During the Term hereof and for one (1) year thereafter, neither party will knowingly directly or indirectly recruit, employ or retain any employee of the other party, or otherwise solicit, induce or influence any employee to leave their employment with the other party, or attempt to do so. The foregoing limitation does not prohibit mass media advertising not specifically directed toward employees of either party.

11.15 Consideration. EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL, BARGAINED-FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

11.16 Force Majeure. Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when such failure or delay results from acts beyond the affected party's reasonable control, including, and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event. In the event that either party's performance is delayed or such party fails to perform its obligations under this Agreement due to a Force Majeure Event, such Party shall (i) promptly (within forty-eight (48) hours notify the other party in writing of such Force Majeure Event and its expected duration; and (ii) use all diligent efforts to recommence performance of its obligations under this Agreement as soon as possible and ensure the effects of such Force Majeure Event are minimized.

Provided, however, the foregoing shall not excuse either party from its obligations under this Agreement to protect the other's proprietary and confidential information. In addition, and notwithstanding the foregoing, Teladoc shall use its reasonable commercial efforts to continue to provide all Services and keep the Services running in accordance with the Documentation and this Agreement during any force majeure event. However, in the event of any force majeure event which results in the delay or suspension of Teladoc's obligations hereunder, Customer's obligations to make any payments due hereunder shall be similarly delayed or suspended until such time as Teladoc resumes performance hereunder. Furthermore, if the period of non-performance exceeds ninety (90) days, Customer may terminate this Agreement upon thirty (30) days written notice and Teladoc shall grant Customer a refund of all prepaid fees.

11.17 Insurance.

11.17.1 Teladoc. Teladoc shall obtain and maintain at all times during this Agreement, at its sole cost and expense, the insurance coverage ("**Teladoc's Insurance Coverage**") set forth below. Teladoc's Insurance Coverage shall be in at least the minimum amounts set forth below, but in no event less than as required by law: (i) Workers Compensation and Employers Liability insurance coverage with limits of liability not less than \$100,000 per employee and per accident; (ii) Commercial General Liability insurance coverage for bodily or property injury and products and completed operations liability with limits of liability not less than \$1 million per occurrence and \$3 million aggregate; and (iii) and (iv) Technology Errors and Omissions and Cyber Liability insurance with total limits of liability not less than \$10 million in annual aggregate. If Customer contracts to have Teladoc Physicians, PA provide physician services on the Platform, pursuant to a separate agreement, the requirements for Teladoc Physicians, PA's Professional Liability Insurance coverage shall be set forth in such separate agreement.

11.17.2 Customer. Customer will maintain the following policies: (i) Workers compensation and employer's liability insurance in an amount not less than the statutory limits for the state(s) in which Services are to be performed, including employer's liability insurance in an amount not less than \$1,000,000; (ii) Commercial general liability insurance, including contractual liability coverage, with minimum limits of liability of not less than \$1,000,000 per occurrence; and (iii) Cyber Liability insurance in an amount not less than \$5,000,000 per occurrence. Customer will also maintain, or cause each physician providing services via the platform to maintain, professional liability insurance in an amount no less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. As a government entity Customer self-insures in values that support the above requirements.

11.17.3 In the event either party procures insurance coverage which is not on an "occurrence basis", such party shall ensure that the reporting period for any claim made that can be made under such coverage extends at least three (3) years following termination of this Agreement. When policies are renewed or replaced (for policies that are not on an "occurrence basis," or if a tail policy is not obtained), the policy retroactive date must coincide with, or precede, the effective date of services in connection herewith. All insurance policies will be issued by reputable insurance companies rated "A-" or better by A.M. Best. Upon either party's request, the other party will furnish certificate(s) of insurance evidencing compliance with the insurance requirements.

11.17.4 Each party shall deliver annually to the other party, upon request, one or more Certificates of Insurance evidencing the above-referenced insurance policies. Each of the above-referenced insurance policies shall provide that the insurance carrier shall endeavor to provide the other party with at least thirty (30) days prior written notification in the event of cancellation, expiration, non-payment of a premium or material alteration of such insurance policy. If one party fails to obtain and maintain any of the above-referenced insurance policies, or fails to deliver a requested Certificate of Insurance to the other party, then the other party shall have the right, but not the obligation, without relieving the first party of default, to obtain such insurance coverage for the account of the other party, and the premium and any other costs thereof shall be immediately due and payable to the other party at such party's sole option.

11.17.5 The coverage limits required above may be satisfied by a combination of umbrella and excess lines of coverages.

[Signature Page(s) Attached]

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused their duly authorized officers to execute this Agreement as of the Effective Date.

TELADOC HEALTH

Kern County Hospital Authority

DocuSigned by:
By: John Otto
CB514E9DADCF497...
Name: John Otto
Title: VP Finance and Integration

By: _____
Name: Russell Bigler
Title: Chairman, Board of Governors

Attachments:

- Exhibit A: Service Fees
- Exhibit B: Customer Service Requirements
- Exhibit C: Service and Platform Components
- Exhibit D: Services - Summary of Included Services and Options
- Exhibit D-2: Additional Services - Hospital Employee Program (if applicable)
- Exhibit E: Equipment Purchase Terms And Conditions (if applicable)

- Schedule A: Business Associate Agreement
- Schedule B: Hospitals in Customer's Hospital System

APPROVED AS TO FORM
Legal Services Department

By: [Signature]
Kern County Hospital Authority

SCHEDULE A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and VENDOR (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of August 18, 2021 (the “**Effective Date**”).

RECITALS

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

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

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

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

AGREEMENT

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

**ARTICLE I
DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information.

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA no later than five (5) business days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of

Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

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

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

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

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

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets

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

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

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

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

2.10 Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to remotely audit privacy and security practices of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such policies and procedures relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose. Covered Entity shall provide thirty (30) days notice of audit and be limited to one audit annually unless requested by an external government entity.

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

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

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

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

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

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

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

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

ARTICLE IV TERM AND TERMINATION

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

4.2 Termination of Underlying Agreement.

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

4.3 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon either Party's knowledge of a material breach or violation of this BAA by the other Party, non-breaching Party shall either:

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

4.3.2 Upon thirty (30) calendar day written notice to breaching Party, immediately terminate this BAA and any Underlying Agreement if non-breaching Party determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

5.9 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat

thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

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

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

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Teladoc Health, Inc.
2 Manhattanville
Purchase, NY 10577
Attn: Privacy Officer

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

5.14 Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and

5.10 of this BAA shall survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

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

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

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

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

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

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

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

ORDER FORM: FEES

- A. This Order Form #Q-10118 is entered into between InTouch Technologies, Inc. dba Teladoc Health (Teladoc) and Kern Medical ("Customer") and is effective as of the date of the last signature below (the "Effective Date"). Teladoc shall provide the Equipment and Services identified below. In consideration of Teladoc's provision of the Equipment and Services and access to and use of the Platform, Customer shall pay Teladoc the fees set forth herein.

EQUIPMENT			
Description / SKU	Quantity	Per Unit Price	Extended Price
¹ Teladoc Health Mini with Backpack / 20-20331	2	\$15,950.00	\$31,900.00
Total			\$31,900.00

ONE-TIME SERVICES			
Description / SKU	Quantity	Per Unit Price	Extended Price
Network Configuration and Optimization (Xpress, Vici, Mini), Onsite / SV-20184	2	\$3,500.00	\$7,000.00
User Training, Per Hour - Remote / SV-20173	1	\$250.00	\$250.00
Shipping & Handling /	2	\$995.00	\$1,990.00
Solo Setup and Configuration / SV-20052	1	\$3,500.00	\$3,500.00
Standard IDM & Authentication / SV-20054	1	\$7,500.00	\$7,500.00
Total			\$20,240.00

SUBSCRIPTION SERVICES				
Description / SKU	Quantity	Monthly Fee per Unit	Total Annual Fees Due	Term in Months
Managed Network Access / SV-20212	2	\$250.00	\$6,000.00	36
Select Support, Mini carts / SV-20254	2	\$275.00	\$6,600.00	36
Proactive Device Monitoring, 24/7 / SV-20213	2	\$200.00	\$4,800.00	36
Solo Premium User License / SW-20352	5	\$69.00	\$4,140.00	36

- B. Unless otherwise specified below (Order Form Special Terms), the following terms apply:

- Invoicing.** Teladoc will use commercially reasonable efforts to ship, enable, and invoice all Equipment and annual Subscription Services no later than twenty (20) business days from Effective Date. If purchase order(s) are required by Customer, delivery will be held until receipt. One-time Services will be invoiced upfront, or upon receipt of PO, if required. Payment obligations are non-cancelable and fees paid are non-refundable.
- Subscription Term.** The term for Subscription Services shall commence on (i) the date which Teladoc notifies Customer that Subscription Services are available for use; and, with respect to subscriptions for Equipment Support, Managed Network Access, and Proactive Monitoring Services, (ii) the date that Equipment ships to Customer.
- Customer is responsible for ensuring: (i) if applicable, resources will be available to receive Equipment at designated receiving location; and (ii) with respect to One-Time Services (e.g. User training, device optimization), a resources will be made available to engage with Teladoc to deliver applicable Services in a timely manner. Notwithstanding the foregoing, Teladoc shall have no obligation to deliver One-Time Services more than six (6) months after the Effective Date.

- 4. Customer agrees to provide administrative user contact information (below). Contact shall receive login access to all Subscription Services.

Order Form Special Terms:

¹A refresh of the device will be made available, as an option, at the end of 36 months, to extend support term, not to exceed \$6,500.00.

Purchase Order Information:

Is a Purchase Order ("PO") required for the purchase or payment of the products or services on this Order Form? (Customer to Complete)

YES	NO	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Equipment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	One-time Services
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Subscription Services

Administrative User Contact:

Name: Reynaldo Lopez Title: Chief Information Officer

E-mail Address: rey.lopez@kernmedical.com

Phone: 661-326-5480

BY SIGNING BELOW, CUSTOMER AND TELADOC AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS ORDER FORM.

Teladoc Health Authorized Signatory

Authorized Signatory: John Otto

Title: VP Finance and Integration

Signature:  C8514E9DADCF497...

Date: 8/11/2021

Customer Authorized Signatory

Authorized Signatory: Russell Bigler

Title: Chairman, Board of Governors

Signature: _____

Date: _____

EXHIBIT B
CUSTOMER SERVICE REQUIREMENTS

This is Exhibit B to the SaaS Agreement (the "Agreement"). All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

1. **Availability.** Teladoc warrants that the Platform Services will be operational and available for use on a 24x7x365 basis with an average uptime commitment of 99.95% per calendar month ("**Uptime Commitment**"). Uptime will be calculated per calendar month, as follows:

A = $((T - F) * 100) / T$, where:

A = Availability percentage.

T = Total time in that calendar month, measured in minutes, but excluding Excused Downtime (as defined below).

F = Total time in that calendar month when Platform Services are unavailable, measured in minutes, but excluding: (a) failure of Customer to meet Minimal Requirements, (b) planned outages (including scheduled maintenance and installation of updates or upgrades), (c) general internet problems, power outages, natural disasters, data communication failures or any other cause outside of Teladoc's reasonable control (items (a) through (c) are collectively referred to as "**Excused Downtime**").

2. **Technical Support.** Teladoc shall provide 24x7x365 unlimited technical support which includes troubleshooting, error correction, and assistance with Platform and Equipment functionality. Access to technical support is provided by phone, e-mail, and online chat.
3. **Software Updates and Maintenance.** Teladoc provides software updates and routine maintenance for its Platform, as well as Client Software. Software updates include minor feature enhancements and error correction patches on a periodic basis at no charge to the Customer. Teladoc expects to be able to issue software updates and deliver routine maintenance with minimal interruption.
4. **Service Level Agreement:** Once a technical support request has been received by Teladoc, either by phone, email, or online chat, and all required information has been gathered, Teladoc will open a support case and assign a severity level, as defined in Exhibit B Attachment 1. attached hereto and made part hereof.

Exhibit B Attachment 1: Service Level Agreement

1. Customer Responsibilities. Customer may initiate technical support tickets by contacting Teladoc's technical assistance center ("TAC") at 877-484-9119. Teladoc will respond to technical support tickets and provide Customer with technical support services in accordance with this Exhibit B. Teladoc will handle all issues on a 24/7/365 basis. Customer agrees to provide Teladoc with system information, as reasonably requested, to permit accurate diagnosis of a software error or Equipment malfunction. Customer agrees to assist Teladoc in the correction of any software error or Equipment malfunction by assigning appropriate personnel at the care location to work with Teladoc's support personnel to test for errors and to implement corrective measures. Customer also agrees to support Teladoc with sufficient test time on Customer's system to duplicate an error, to certify that a software error is a software error and to certify that a software error has been corrected. Customer agrees that Teladoc's ability to diagnose and correct a software error or Equipment malfunction is expressly dependent upon the fulfillment of Customer's responsibilities specified in this Section 1.

Priority	Severity	Service Level Target
<p>P1: Critical</p>	<ul style="list-style-type: none"> • Systemic loss of core functionality of a critical system, product, or major component which causes multiple Users or Customers to be unable to start, continue or complete a consult • Inability to transmit and receive data caused by a failure of Software or network equipment managed and owned by Teladoc, excluding maintenance and force majeure, but including Teladoc managed switches, routers, and cabling • Infrastructure failure that impacts multiple Customers • Medical Device Reporting (event ("MRD")) • Security incident (breach or data loss) • Customer network outage where many care locations of a single Customer losses connectivity to the network in a short amount of time • Systemic issue affecting multiple Customers • Complete loss of Platform Services to all Users 	<ul style="list-style-type: none"> • Initial Update: 30-60 Minutes • If there is a catastrophic disaster that cannot be handled by Teladoc's fallback data centers, Customer will be notified as soon as possible, but not more than 2 hours • Subsequent Update: Every 2 hours or at a time frame agreed upon with Customer • Target Resolution: Twenty- four (24) hours from issue validation including a planned release of software or planned network equipment repair. • Root Cause Analysis ("RCA") / Situation, Background, Assessment, Recommendation ("SBAR"): Required 72 hours from resolution
<p>P2: High</p>	<ul style="list-style-type: none"> • Customer experiences material degradation of Platform Services or use of Equipment that interferes with the ability to perform a consult. • The Platform Services may be usable but are materially limited due to specific and essential functionality no longer working. • Localized Equipment is down and is unavailable for use at Customer site with no viable fallback methodology, but there is a viable workaround • Platform Services are severely impaired causing significant impact to majority of Users • Product defect with workaround critical to job function 	<ul style="list-style-type: none"> • Initial Update: 60-90 Minutes • Subsequent Update: Every 4 hours or at a time frame agreed upon with Customer • Target Resolution: Five (5) business days from issue validation or planned release of Software or planned Equipment repair

<p>P3: Med</p>	<ul style="list-style-type: none"> • Any request from Customer that does not cause an issue with using the system • Customer-specific or location-specific issue that does not affect User ability to access Platform Service or use of Equipment • Application failure, not critical to job function Work around provided • Business impacting product enhancement, affecting a small number of Users 	<ul style="list-style-type: none"> • Initial Update: 4 hours • Subsequent Update: A time frame agreed upon with Customer • Target Resolution: Thirty (30) business days of issue validation including a planned software release
<p>P4: Low</p>	<ul style="list-style-type: none"> • Any request from Customer that has nothing to do with limited use of system • Feature requests, cosmetics, documentation errors • Inquiries for information only (i.e. how to use the product or recommended practices) • Incidents that have no impact to the business 	<ul style="list-style-type: none"> • Initial Update: 1 business day • Subsequent Update: A time frame agreed upon with Customer • Target Resolution: Product roadmap planned release

EXHIBIT C: EQUIPMENT PURCHASE TERMS AND CONDITIONS

1. Delivery.

(a) For orders within the U.S., Teladoc will ship the Equipment FOB, Origin. For orders outside the U.S., Teladoc will ship the Equipment Ex-Works (Incoterms 2000) Teladoc's point of shipment. Unless otherwise agreed in writing, Teladoc will pack the Equipment in accordance with its standard practices. Unless Customer provides Teladoc with specific instructions, Teladoc will select the carrier. Customer will be responsible for all freight, packing, insurance, and other shipping-related costs and expenses.

(b) Customer acknowledges that all scheduled shipment dates are estimates only. Teladoc will make reasonable efforts to meet the scheduled shipment dates, but in no event will Teladoc be liable for any loss, damage, or penalty resulting from any delay in shipment or delivery, nor will the carrier be deemed an agent of Teladoc. Teladoc will have the right to ship the Equipment in installments and separately invoice Customer for such installments. Teladoc will have the right to allocate its available inventory of Equipment among its customers in such manner as Teladoc deems equitable. Teladoc will have the right to delay or suspend shipment of any Equipment if Customer fails to make any payment as provided in the Order Form or if Customer fails to meet Teladoc's credit or financial requirements.

2. Limited Warranty and Disclaimers.

(a) Equipment Warranty. Essential Support shall apply only to Teladoc Equipment. Teladoc's sole obligation under this express warranty shall be, at Teladoc's option and expense: (i) to repair the defective Equipment or part; (ii) to deliver to Customer an equivalent unit of Equipment or part to replace the defective item, or if neither of the two foregoing options is reasonably available, Teladoc may, in its sole discretions; (iii) refund to Customer the purchase price paid for the defective Equipment. Procedures and response times in connection with warranty claims under Essential Support are set forth in Exhibit B Attachment 1, attached hereto.

(b) Select Support. From time to time, Customer may purchase an Equipment warranty upgrade ("Select Support"). Under Select Support, Teladoc agrees to provide the following:

Description	⁴ Term
¹ Equipment Replacement or Repair, including shipping cost	36- 60-month terms available
Annual Preventative Maintenance	
² On-Site Repair	
³ Battery Replacement	
^{1,2} Procedures and response time in connection with warranty claims under Select Support are set forth in Exhibit B Attachment 1, attached hereto. ³ Not to exceed once every eighteen (18) months from date of Equipment shipment. Teladoc shall not be responsible for batteries that have been drained or damaged to Customer neglect. ⁴ Equipment leased shall automatically receive Select Support for term of the lease	

(c) Exclusions. Teladoc will have no obligation to the extent that any failure of Equipment to comply with the limited warranty results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Equipment by the Customer; (ii) use of the Equipment other than in accordance with Teladoc's published specifications or user manual; (iii) modifications, alterations or repairs to the Equipment made by a party other than Teladoc or a party authorized by Teladoc; (iv) any failure by Customer or a third party to comply with hardware and software platform specifications and environmental and storage requirements for the Equipment as specified by Teladoc, including, without limitation, temperature or humidity ranges; or (v) use of the Equipment in combination with any third-party applications, devices or other products or services that have not been provided or recommended by Teladoc. If any Equipment requires service from Teladoc due to misapplication, abuse, misuse, alteration, or

unauthorized repair, installation, or transfer of Software, Customer will be charged for the service at Teladoc's standard hourly rate in effect at the time such service is performed.

(d) DISCLAIMER OF WARRANTIES. THE LIMITED WARRANTY SET FORTH HEREIN IS IN LIEU OF, AND TELADOC SPECIFICALLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUALITY, ACCURACY AND TITLE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM TELADOC OR ELSEWHERE, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS. TELADOC DOES NOT WARRANT THAT THE EQUIPMENT IS ERROR-FREE OR THAT OPERATION OF THE EQUIPMENT WILL BE SECURE OR UNINTERRUPTED.

3. Proprietary Equipment. Customer acknowledges that the Equipment contains trade secrets of Teladoc, and, in order to protect such trade secrets, Customer agrees not to disassemble, decompile, or reverse engineer the Equipment nor permit any third party to do so, except to the extent such restrictions are prohibited by law.

4. Third Party Equipment Warranty. Any equipment that is not manufactured by Teladoc ("Third Party Equipment") will be subject to the warranty provided by the manufacturer of such equipment. Teladoc makes no warranty of any kind with regard to such equipment. Teladoc shall assign and transfer to Customer all manufacturer warranties with respect to parts and equipment manufactured by others that are incorporated into or used in connection with the Telehealth Services to the greatest extent permitted by the manufacturer and applicable law.



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

August 18, 2021

Subject: Proposed Retroactive Amendment No. 1 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed retroactive agreement with Jeffrey G. Nalesnik, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery.

Dr. Nalesnik has been employed by Kern Medical since January 1, 2016 as the Vice Chair Department of Surgery, Chief, Division of Urology and Director of Robotic Surgical Services and was recently appointed as the Department Chair of Surgery.

Dr. Nalesnik's annual salary is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents the reasonable fair market value compensation for the services provided. Included in Dr. Nalesnik's annual salary, he receives a base salary for his department chair position, teaching and administrative duties as well as patient care and on-call coverage for Kern Medical.

Therefore, it is recommended that your Board approve the Agreement with Jeffrey G. Nalesnik, M.D., for professional medical and administrative services in the Department of Surgery for the period January 1, 2016 through December 31, 2022, extending the term through December 31, 2025, effective August 3, 2021, increasing the maximum payable by \$2,550,000, from \$6,424,358 to \$8,974,358, to cover the extended term, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Jeffrey G. Nalesnik, M.D.)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Jeffrey G. Nalesnik, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #873-2015, dated December 8, 2015) (the “Agreement”), for the period January 1, 2016 through December 31, 2022, whereby Physician provides professional medical and administrative services in the Department of Surgery at KMC; and

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

(c) The Agreement is amended effective August 3, 2021;

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

1. Section 1, Term, shall be deleted in its entirety and replaced with the following:

“1. **Term.** The term of this Agreement shall be for a period of 10 years, commencing as of January 1, 2016 (the “Commencement Date”), and shall end December 31, 2025 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.”

2. Section 2, Employment, shall be deleted in its entirety and replaced with the following:

“2. **Employment.** Authority hereby employs Physician as Chair, Department of Surgery 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. Section 4, Obligations of Physician, paragraph 4.6, Managed Care Organizations, shall be deleted in its entirety and replaced with the following:

“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 Authority or 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 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.”

4. Section 5, Compensation Package, shall be amended as follows:

“5. Compensation Package. Physician shall work full time, which is a minimum of 80 hours per biweekly pay period, and will be compensated with cash and other value as described below in this section 5.”

5. Section 5, Compensation Package, paragraph 5.5, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$8,974,358 over the 10-year Term of this Agreement.”

6. Section 5, Compensation Package, paragraph 5.6, Fair Market Value Compensation, shall be made part of the Agreement as follows:

“5.6 Fair Market Value Compensation. The compensation provided under section 5 represents the parties’ good faith determination of the reasonable fair market value compensation for the services to be provided by Physician under this Agreement.”

7. Section 6, Benefits Package, shall be deleted in its entirety and replaced with the following:

“6. **Benefits Package.**

6.1 **Retirement.** Physician participate in the Kern County Hospital Authority Defined Contribution Plan for Physician Employees (f/k/a Kern County Pension 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 receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is 20% of the current biweekly premium. Physician’s initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least 40 hours per biweekly pay period to be eligible for coverage.

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

6.4 **Vacation.** Physician shall be credited with vacation leave of 9.23 hours for each pay period of service, for a maximum accrual of 240 hours per Employment Year. Total unused vacation leave accumulated will not exceed a maximum of 280 hours. No further vacation leave will accrue as long as Physician has the maximum number of hours credited. The Chief Medical Officer must approve all vacation leave in advance. 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 be entitled to sick leave subject to Authority policy, as amended from time to time. Physician will not be paid for accrued and unused sick leave upon termination of employment.

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

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

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

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

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

6.11 Social Security. Physician is exempt from payment of Social Security taxes as the Kern County Hospital Authority 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.”

8. Section 30, Liability of Authority, shall be made part of the Agreement as follows:

“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.”

9. Exhibit “A,” Job Description, shall be deleted in its entirety and replaced with Amendment No. 1 to Exhibit “A,” Job Description, attached hereto and incorporated herein by this reference.
10. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
11. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
12. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which take together shall constitute one and the same instrument.
13. Except as provided herein, all other terms, conditions and covenants of the Agreement shall remain in full force and effect.

[Intentionally left blank]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 1 as of the day and year first written above.

PHYSICIAN

By _____
Jeffrey G. Nalesnik, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend1.Nalesnik.080421

**AMENDMENT NO. 1
TO
EXHIBIT "A"
JOB DESCRIPTION
Jeffrey G. Nalesnik, M.D.**

Position Description: Reports to Chief Medical Officer; serves as Chair, Department of Surgery; serves as a full-time faculty member in the Department; provides no fewer than 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.

Essential Functions:

A. Leadership and Administrative Responsibilities

- Leadership as Department Chair, including mentoring and professional development of all Department faculty, residents, and medical students
- Maintain and enhance excellence of the surgery residency program and accreditation by the RRC and ACGME
- Appoint and provide oversight of the surgery residency Program Director and program curriculum
- Develop a departmental culture that ensures prompt recognition of medical adverse events, prompt corrective action, and transparency with the organization as well as a culture that consistently focuses on patient care and patient safety
- Develop a departmental 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
- Responsibility for preparing or delegating staff schedules and clinical assignments to maximize productivity and quality care as well as ensuring 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, and ensuring 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 as well as specific alignment for the Department with UCLA or another appropriate academic medical institution

- Membership on the Medical Executive Committee and participate in Medical Staff and other hospital committees
- Participation in quality and system improvement initiatives, including improving patient satisfaction and enhancing timely access to care as well as peer review within the Medical Staff and Department
- Collaboration with all other KMC Department Chairs
- Collaboration 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 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

- The Chair is a working clinical position that models exemplary clinical outcomes and professional leadership behaviors
- Serve as an attending physician in the Department performing appropriate therapeutic and diagnostic care and procedures within the scope of practice for an urologic surgeon while on service
- Supervise residents and medical students
- Supervise Advance Practice Providers (APP) in the Department and ensure competence
- Supervise procedures performed by residents and mid-levels while on service

C. Medical Education, Teaching, and Academic Responsibilities

- Serve as a faculty member providing supervision and instruction to residents and medical students
- Provide clinical mentoring to and evaluation of residents and medical students
- Establish and maintain an academic appointment at the David Geffen School of Medicine at UCLA or other major academic medical center
- Serve as a mentor to residents and medical students who desire to conduct research or other scholarly activity

- Demonstrate active involvement in continuing urology/urologic surgery 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 educational program
- Participate in the development of Department curriculum
- Attend and participate in the weekly Department didactic sessions
- Deliver urology/urologic surgery lectures as appropriate throughout the year

Employment Standards:

Completion of an accredited residency program in urology; one (1) year of post-residency experience in urologic surgery 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 Urology in urology-general

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

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

August 18, 2021

Subject: Proposed Retroactive Amendment No. 4 to Agreement 161-2016 with Valley Children's Medical Group, Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve retroactive Amendment No. 4 to Agreement 161-2016 with Valley Children's Medical Group, Inc., for on-site consultation services to pediatric patients at Kern Medical. Valley Children's Medical Group has been providing Pediatric Gastroenterology, Pediatric and Neonatal Echocardiography and EKG Interpretation and Pediatric Echocardiology Sonographer Services to pediatric patients since April 2016.

Therefore, it is recommended that your Board approve Amendment No. 4 to Agreement 161-2016 with Valley Children's Medical Group, Inc., an independent contractor, for on-site consultation services to pediatric patients for the period August 2, 2015 through August 1, 2022, extending the term one year from August 2, 2021 through August 1, 2022, and increasing the maximum payable by \$180,000, from \$969,000 to \$1,149,000, to cover the extended term and authorize the Chairman to sign.

**AMENDMENT NO. 4
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Valley Children’s Medical Group, Inc.)**

This Amendment No. 4 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Valley Children’s Medical Group, Inc., a California nonprofit public benefit corporation (“Contractor”), with its principal place of business located at 9300 Valley Children’s Place, Madera, California 93636.

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Kern County Agt. #161-2016, dated April 5, 2016), Amendment No. 1 (Agt. #07618, dated August 2, 2017), Amendment No. 2 (Agt. #041-2019, dated July 17, 2019), and Amendment No. 3 (Agt. #037-2020, dated August 19, 2020) (the “Agreement”), for the period August 2, 2015 through August 1, 2021, whereby Contractor provides professional medical services to pediatric patients at KMC; and

(b) The Agreement expires August 1, 2021; and

(c) KMC continues to require the services of Contractor to fill voids in staffing; and

(d) It is the intent of the Parties to have the terms of the Agreement provide for the payment of all reasonably projected costs and expenses related to the services provided by Contractor; and

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

(f) The Agreement is amended effective August 2, 2021;

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

1. Section 1, Term, shall be deleted in its entirety and replaced with the following:

“1. Term. Performance by Contractor and Authority shall commence August 2, 2015, and shall end August 1, 2022, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.”

2. Section 4, Payment for Services, paragraph 4.4, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“4.4 Maximum Payable. The maximum payable under this Agreement shall not exceed \$1,149,000 over the seven-year term of this Agreement.”

3. Amendment No. 2 to Exhibit “B,” Fee Schedule, shall be deleted in its entirety and replaced with Amendment No. 3 to Exhibit “B,” Fee Schedule, attached hereto and incorporated herein by this reference.
4. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
5. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
6. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
7. Except as provided herein, all other terms, conditions and covenants of the Agreement and any amendments thereto shall remain in full force and effect.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 4 as of the day and year first written above.

VALLEY CHILDREN'S MEDICAL GROUP, INC.

By _____
Michael Goldring
President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend4.Valley Children's Medical Group.072721

**AMENDMENT NO. 3
TO
EXHIBIT "B"
FEE SCHEDULE
Valley Children's Medical Group, Inc.
(Effective August 2, 2021)**

A. Pediatric Gastroenterology Services

For pediatric gastroenterology services rendered, Authority shall pay Contractor a per diem rate of \$3,000 per full-day clinic.

B. Pediatric and Neonatal Echocardiography and EKG Interpretation Services

For pediatric and neonatal echocardiography and EKG interpretation services rendered, Authority shall by Contractor a monthly rate of \$100 per month.

C. Pediatric Echocardiology Sonographer Services

For pediatric echocardiology sonographer services rendered, Authority shall pay Contractor a per study rate of \$260.21 per study.

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

August 18, 2021

Subject: Proposed Amendment No. 1 to Agreement 052-2019 with Pacific Gynecologic Specialists, a California General Partnership, for Professional Physician Services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 1 to Agreement 052-2019 with Pacific Gynecologic Specialists, a California general partnership, for professional gynecologic oncology services in the Department of Obstetrics and Gynecology. Pacific Gynecologic Specialists has contracted with Kern Medical since 2007 when it was owned and operated by the County of Kern. The Contractor provides professional physician services at the hospital and clinics, has academic responsibilities in the OB/GYN residency, and supports Kern Medical's cancer programs.

Therefore, it is recommended that your Board approve the agreement with Pacific Gynecologic Specialists, from September 1, 2021 through August 31, 2023, increasing the maximum payable by \$800,000, from \$800,000 to \$1,600,000 over the four-year term and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Pacific Gynecologic Specialists)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Pacific Gynecologic Specialists, a California general partnership (“Contractor”), and the individual partners of Contractor, with its principal place of business located at 300 West Huntington Drive, Arcadia, California 91007.

RECITALS

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #052-2019, dated August 21, 2019) (“Agreement”), for the period September 1, 2019 through August 31, 2021, for professional medical services in the Department of Obstetrics and Gynecology at KMC; and

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

(c) The Agreement is amended effective September 1, 2021;

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

1. Section 1, Term, shall be deleted in its entirety and replaced with the following:

“1. **Term.** This Agreement shall be effective and the term shall commence as of September 1, 2019 (the “Effective Date”), and shall end August 31, 2023, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.”

2. Section 4, Payment for Services, paragraph 4.2, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“4.2 **Maximum Payable.** The maximum payable under this Agreement shall not exceed \$1,600,000 over the four-year term of this Agreement.”

3. Exhibit “C,” Insurance, shall be deleted in its entirety and replaced with Amendment No. 1 to Exhibit “C,” Insurance, attached hereto and incorporated herein by this reference.

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

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

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

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

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 1 as of the day and year first written above.

PACIFIC GYNECOLOGIC SPECIALISTS

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

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

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

**AMENDMENT NO. 1
TO
EXHIBIT "C"
INSURANCE**

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

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

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$300,000 per person for bodily injury; \$300,000 per incident for bodily injury; \$100,000 per incident property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

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

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

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

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

7. Documentation:

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

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

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

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

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

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

August 18, 2021

Subject: Proposed Agreement with Frank W. Sabatelli, M.D.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an agreement with Frank W. Sabatelli, M.D., for professional medical services in the Department of Radiology, from August 28, 2021 through August 27, 2024, in an amount not to exceed \$2,350,000.

Dr. Sabatelli is a board-certified radiologist and has worked at Kern Medical as an independent contractor since December 2020. Before coming to Kern Medical, Dr. Sabatelli was the Chairman of Radiology/Medical Director at Abrazo Hospital, Goodyear, Arizona.

Dr. Sabatelli's annual salary is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents reasonable fair market value compensation for the services provided. Dr. Sabatelli's compensation is comprised of (i) a base salary for teaching and administrative duties; (ii) payment for care of KMC patients; (iii) maintaining a median level (50th percentile) of worked relative value units; (iv) and weekday and weekend call coverage. Dr. Sabatelli will receive benefits to include eligibility to participate in the physicians' pension plan, healthcare coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the agreement with Frank W. Sabatelli, M.D., a contract employee, for professional medical services in the Department of Radiology from August 28, 2021 through August 27, 2024, in an amount not to exceed \$2,350,000, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Frank W. Sabatelli, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Frank W. Sabatelli, 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 services in the Department of Radiology 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 an independent contractor for the provision of professional medical services in the Department (Agt. #63020, dated December 18, 2020), for the period December 15, 2020 through December 14, 2022; and

(e) Each party expressly understands and agrees that Agt. #63020 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 initial term of this Agreement (“Initial Term”) shall be for a period of three (3) years, commencing as of August 28, 2021 (the “Commencement Date”). At the end of the Initial Term and each Renewal Term (as hereinafter defined), if any, this Agreement may be renewed for two (2) additional terms of two (2) years each (“Renewal Term”), but only upon mutual written agreement of the parties. As used herein, the “Term” of this Agreement shall mean the Initial Term and all Renewal Terms. 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 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 Radiology in diagnostic radiology-general and maintain such certification at all times during the Term of this Agreement.

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

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

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

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

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

agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

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

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

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

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

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

5. Compensation Package.

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$500,000 per year, to be paid as follows: Physician shall be paid \$19,230.76 biweekly not to exceed \$500,000 annually. Physician understands and agrees that (i) the annual salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the term of this Agreement.

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

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

5.2 Additional Shifts. Authority shall pay Physician for additional shifts (excludes nonproductive time²; diagnostic imaging only) as follows:

² Nonproductive time is defined to include, without limitation, holidays, education leave, vacation, and sick leave.

5.2.1 Weekday Coverage. Physician shall be paid a per shift rate in the amount of \$1,700 for every weekday shift (Monday-Friday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

5.2.2 Weekend Coverage. Physician shall be paid a per shift rate in the amount of \$1,900 for every weekend shift (Saturday and Sunday) that exceeds 20 eight-hour shifts per month or 16 10-hour shifts per month.

5.2.3 Holiday Coverage. Authority shall pay Physician a per diem rate in the amount of \$1,900 per day for holiday coverage (designated Authority holidays only).

5.2.4 Taxes. All payments made by Authority to Physician for additional shifts shall be subject to all applicable federal and state taxes and withholding requirements.

5.3 Excess Call Coverage. Authority shall pay Physician for excess call coverage (vascular/interventional radiology only) as follows: (i) Physician shall be paid a fixed fee in the amount of \$1,000 per 24-hour day for every weekday (Monday-Friday) of call coverage assigned; and (ii) Physician shall be paid a fixed fee in the amount of \$2,000 per 24-hour day for every weekend (Saturday and Sunday) of call coverage assigned. When assigned to cover the vascular/interventional radiology service, Physician shall be paid the vascular/interventional radiology shift coverage per diem rate regardless of whether Physician provides diagnostic radiology services during the shift. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.4 Starting Bonus.

5.4.1 Bonus. Physician shall receive a starting bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings, payable within 10 business days of the Commencement Date. Physician shall forfeit the starting bonus if he fails to report to work on the Commencement Date.

5.4.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever before the first anniversary of this Agreement, 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 30 days of the effective date of his termination of employment with Authority.

5.4.3 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 starting bonus.

5.5 Retention Bonus.

5.5.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$10,000, less all applicable federal and state taxes and withholdings, payable within 30 days of the end of each Employment Year. If the conditions for Physician to receive the retention bonus are met, the retention bonus would become payable to Physician on September 27, 2022, for the previous Employment Year, and each September 27 thereafter.

5.5.2 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 \$10,000 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 30 days of the effective date of his termination of employment with Authority.

5.5.3 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.

5.6 Professional Fee Billing.

5.6.1 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.

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

5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,350,000 over the three-year Initial Term of this Agreement.

6. Benefits Package.

6.1 Retirement. Physician shall 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 receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is 20% of the current biweekly premium. Physician is eligible for coverage the first day of the biweekly payroll period coincident with or next following the day he completes one (1) month of continuous service. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least 40 hours per biweekly pay period to be eligible for coverage.

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

6.4 Vacation. Physician shall 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 be entitled to sick leave subject to Authority policy, as amended from time to time. Physician will not be paid for accrued and unused sick leave upon termination of employment.

6.6 Education Leave. Physician shall receive 80 hours paid education leave annually. The first 80 hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional 80 hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The Department Chair 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 Department Chair. 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 Relocation Reimbursement. Authority shall reimburse Physician for actual relocation expenses (defined as the packing, moving and unpacking of household goods and vehicles) and travel expenses (defined as lodging, meals, mileage and incidental expenses) associated in moving to Bakersfield, California, in an amount not to exceed \$7,500, payable in arrears, in accordance with Authority policy. Reimbursement of travel expenses will include per mile reimbursement for one (1) personal vehicle at the current privately owned vehicle (POV) mileage reimbursement rate established by the U.S. General Services Administration, meals and incidental expenses for Physician only at the current domestic per diem rates established by the U.S. General Services Administration for Kern County, and reasonable hotel accommodations not to exceed the maximum allowable reimbursement rate including taxes established by Authority. Physician shall be deemed vested in reimbursement of relocation expenses in the amount of \$208.34 per month beginning on the last day of the month in which the relocation expenses are reimbursed to Physician. In the event Physician’s employment is terminated by either party, with or without cause, then, on the effective date of such termination, Physician shall repay to Authority all amounts received in which Physician has not yet become vested.³

³ By way of example only, in the event Physician terminates his employment after 12-months then Physician will be vested to the extent of \$2,500 in the relocation expenses described herein and will be obligated to repay Authority the amount of \$5,000. **In the event Physician fails to pay such amount to Authority, Physician expressly grants to Authority the right to offset any amounts owed to Authority against any payments made to Physician by Authority.**

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

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

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

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

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

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

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

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

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

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

16. **Dispute Resolution.** In the event of any dispute involving the enforcement or interpretation of this Agreement or any of the rights or obligations arising hereunder, the parties shall first attempt to resolve their differences by mediation before a mediator of their mutual selection. If the parties are, after mutual good faith efforts, unable to resolve their differences by mediation, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court. All costs of any dispute resolution procedure shall be borne equally by the parties.

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

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

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

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

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

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

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

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

Notice to Physician:

Frank W. Sabatelli, M.D.
8650 Spicewood Springs, Suite 145-578
Austin, Texas 78759

Notice to Authority:

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

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

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

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

28. **Termination.**

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

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

KERN COUNTY HOSPITAL AUTHORITY

By: _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By: _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By: _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Sabatelli.080521

EXHIBIT “A”
JOB DESCRIPTION
Frank W. Sabatelli, M.D.

Position Description: Reports to Chair, Department of Radiology; Serves in the Division of Vascular and Interventional Radiology; works collaboratively with the Department manager to ensure efficient workflow and adequacy of support equipment.

Essential Functions:

1. Clinical Responsibilities

- Provides radiology services on-site at KMC and in accordance with generally accepted professional standards
- Provides professional services for all patients who present to KMC for treatment
- Participates in special procedures and in rotations in the various departmental image reading queues
- Provides weekday shift coverage, as assigned by the Department chair
- Provides weekend shift coverage, as assigned by the Department chair
- Provides call coverage weekday nights, as assigned by the Department chair
- Provides 24-hour weekend call coverage, as assigned by the Department chair
- Provides first call and backup call for vascular and interventional radiology, as assigned by the Department chair
- Carry a pager when on call and respond to call within 10 minutes

2. Administrative Responsibilities

- Assists in clinical and administrative integration efforts across KMC as appropriate for the Department, assisting with proper program planning, physician recruitment, faculty development, resource allocation, analysis, communication and assessment
- Gathers data through best practices and collaborates with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
- Supports the Department Chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes
- Participates in the preparation, monitoring, review, and performance of clinical activity in the Department
- Participates in the quality improvement and risk management activities, including peer review and quality control functions, as assigned to services in the Department
- Completes medical records in a timely fashion and works to improve the quality, accuracy, and completeness of documentation
- Works collaboratively with other clinical departments to develop further a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services

- Follows and complies with the Medical Staff bylaws, rules, regulations, and policies, Department rules, policies, and procedures, and Authority and KMC policies and procedures
- Attends Department staff meetings and the annual Medical Staff meeting
- Attends and actively participates in Medical Staff and hospital committees, as assigned
- Participates in other clinical, academic, and administrative activities, as assigned by the Department Chair
- Participates in the training of residents and medical students, including the review of active and past case material, as required for patient care
- Participates in proficiency testing and performance improvement programs, as required
- Pursues optimized interventional radiology services, development of a comprehensive interventional radiology program, and works cooperatively with other physician specialties that may access the Cath lab
- Participates in additional administrative responsibilities, as required

Employment Standards:

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

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 Radiology in diagnostic radiology-general

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to the field of diagnostic and interventional radiology; principles of effective supervision and program development.

[Intentionally left blank]

EXHIBIT "B"
AUTHORIZATION TO RELEASE INFORMATION

[See attached]

AUTHORIZATION TO RELEASE INFORMATION

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

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

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

Physician

Date



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

August 18, 2021

Subject: Proposed retroactive Amendment No. 2 to Agreement 716-2016 with the County of Kern for Health Care Services, Finance and Support

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board retroactively approve the proposed Amendment No. 2 to the Agreement for Health Care Services, Finance and Support with the County of Kern for the purpose of reducing the County's liability related to financial obligations of Kern Medical prior to 2013 and to pass along refunds of a portion of those obligations received by the Authority to the County.

On July 1, 2016, as a part of the transfer of the Kern Medical facilities and operations from the County to the Authority, the County and the Authority entered into an Agreement with the County for Health Care Services, Finance, and Support. Among other things, this Agreement provided that the County was responsible for certain financial obligations, originating from Kern Medical operations for years prior to 2013, up to a maximum of \$19 million. These obligations were tied to specific cost reports which were outstanding and awaiting final review at the time of the original Agreement. Over the past few years most of these cost reports have been finalized and audited and, as a result of rulings made by the federal government and amounts determined to be owed to Kern Medical for underpayments for services provided during those years, a refund of \$12,428,671 was issued to the Authority. Because, pursuant to the original agreement, this refund is associated with liabilities and cost reports of the County and not the Authority, the proposed Amendment has been prepared to pass along the refund of these obligations to the County and to reduce the cost report liability exposure of the County from \$19 million to \$8.57 million. The proposed Amendment requires the Authority to pay \$12,428,671 to the County for amount associated with cost reporting years ending in 2012 or before that were refunded to the Authority. The Amendment was approved by the Board of Supervisors on August 10, 2021.

Therefore, it is recommended that your Board retroactively approve the proposed Amendment No. 2 to the Agreement for Health Care Services, Finance and Support with the County of Kern, in an amount not to exceed \$12,428,671, effective August 10, 2021, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
AGREEMENT FOR HEALTH CARE SERVICES, FINANCE AND SUPPORT
(County of Kern – Kern County Hospital Authority)**

This Amendment No. 2 to the Agreement for Health Care Services, Finance and Support is made and entered into this ____ day of _____, 2021, between the County of Kern, a political subdivision of the state of California (“County”), and the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“Medical Center”).

RECITALS

(a) The County and the Authority have heretofore entered into an Agreement for Health Care Services, Finance and Support (Kern County Agt. #716-2016), as of July 1, 2016, in order to provide for certain financial relationships between the County and the Authority, which was amended on March 19, 2019 (collectively referred to herein as the “Agreement”); and

(b) The Agreement provides that the County shall pay and satisfy any and all repayment obligations ultimately determined to be owing with respect to Cost Reports for the reporting years ending 2012 or before, but not in an amount that exceeds, in the aggregate for all years, \$19 million; and

(c) As of the effective date of this Amendment No. 2, the County has made payments of \$38,891,885 with respect to the Cost Reports for the reporting years ending 2012 or before where final settlement resulted in overpayments to the Medical Center; and

(d) As of the effective date of this Amendment No. 2, the Authority has returned payments of \$27,637,837 to the County with respect to the Cost Reports for the reporting years ended 2012 or before where final settlement resulted in underpayments to the Medical Center; and

(e) Pursuant to rulings made by the federal government, \$4,656,046 of the liabilities recorded by the Authority associated with the Cost Reports for the reporting years ending 2012 or before were found not to be owed for years ending 2012 or before, and were refunded to the Authority; and

(f) Pursuant to final reconciliation of Cost Reports for the reporting years ended 2012 or before, \$7,772,625 was paid to the Authority for amounts determined to be owed to the Medical Center for underpayments for services provided during those years; and

(g) The County and the Authority desire to amend the Agreement to reduce the total exposure of the County to obligations associated with Cost Reports for the reporting years ending 2012 by a portion of the amount refunded to the Authority; and

(h) The Agreement is amended effective August 10, 2021;

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

1. Section 1, Maintenance and Provision of Health Care Services, paragraph d, shall be deleted in its entirety and replaced with the following:

“d. The Authority shall timely prepare all interim and final Cost Reports and amended Cost Reports, as necessary, including any updates and revisions thereto, for all outstanding reporting periods not finalized by the applicable Governmental Authorities as of the closing date and all subsequent reporting periods, and shall maintain all supporting documents and data thereto for the applicable retention periods. The County shall pay and satisfy any and all repayment obligations ultimately determined to be owing with respect to any such Cost Reports for the reporting years ending in 2012 or before, but not in an amount that exceeds, in the aggregate for all years, \$8.57 million. In the event any such repayment obligation exceeds \$8.57 million, the County shall, if requested by the Authority, meet and confer with the Authority regarding the payment of the excess amount, but, in the absence of agreement by the County to pay more, the Authority shall pay and satisfy any and all repayment obligations in excess of \$8.57 million. Except as otherwise provided herein and in Section 2 below, the Authority shall pay and satisfy any and all repayment obligations ultimately determined to be owing and shall be entitled to retain any additional payments with respect to any such Cost Reports.

2. Within fifteen (15) days of the execution of this Amendment, the Authority shall pay to the County \$12,428,671 for amounts associated with reporting years ending in 2012 or before that were refunded to the Authority.

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

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

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

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

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 2 as of the day and year first written above.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Supervisors

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
ADMINISTRATIVE OFFICE

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
James L. Zervis
Chief Operations Officer

By _____
Russell V. Judd
Chief Executive Officer

KERN COUNTY TREASURER-TAX
COLLECTOR

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Jordan Kaufman
Treasurer-Tax Collector

By _____
Karen S. Barnes
Vice President & General Counsel
Kern County Hospital Authority

KERN COUNTY AUDITOR-
CONTROLLER-COUNTY CLERK

By _____
Mary B. Bedard
Auditor-Controller-County Clerk

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By _____
Margo A. Raison
County Counsel



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

August 18, 2021

Subject: Proposed retroactive Grant Agreement between the County of Kern and the Kern County Hospital Authority

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board retroactively approve the proposed grant agreement with the County of Kern to receive \$10 million made available through the American Rescue Plan Act for the purpose of mitigating the negative economic impacts of COVID-19 and to ensure operations of the health facilities to support access to medical and public health services by vulnerable populations.

The \$1.9 trillion American Rescue Plan Act of 2021 (ARPA) established the Coronavirus State Fiscal Recovery Fund (CSFRF) and Coronavirus Local Fiscal Recovery Fund (CLFRF), which provide a combined \$350 billion in assistance to eligible state, local, territorial, and Tribal governments to help local governments recover from the financial impact of the pandemic, fund unmet ongoing public health needs related to the pandemic, address its economic impacts on employees and specific industries, and lay the foundation for a strong and equitable recovery through the investment in certain necessary infrastructure projects.

Kern Medical is the only public hospital in Kern County and will utilize the allocated funds to support access to medical and public health services by vulnerable and/or disproportionately impacted populations, and any capital acquisition or construction to maintain or enhance operations of its health facilities to meet pandemic operational needs.

The Agreement was approved by the Board of Supervisors on August 10, 2021.

Therefore, it is recommended that your Board retroactively approve the proposed grant agreement with the County of Kern to receive funds made available through the American Rescue Plan Act, effective August 10, 2021, in the amount not to exceed \$10,000,000, and authorize the Chairman to sign.

**GRANT AGREEMENT
AMERICAN RESCUE PLAN ACT PROGRAM
KERN COUNTY HOSPITAL AUTHORITY**

THIS GRANT AGREEMENT (“**Agreement**”) is made and entered into on _____ (the “Effective Date”), by and between the County of Kern, a political subdivision of the State of California (“**County**”), and the Kern County Hospital Authority, a public agency that is a local unit of government, which owns and operates Kern Medical Center (“**Recipient**”).

RECITALS:

(a) County and Recipient entered into the Master Contract for the Transfer of Health Facilities on June 8, 2016, (“**Master Contract**”), by which the County transferred Kern Medical Center, retail pharmacies, and certain outpatient clinics (collectively, along with related administrative support services, “the **Health Facilities**”) to Recipient to be owned, maintained, controlled, managed, and operated by Recipient as public health facilities through which County shall continue to meet certain of its statutory and other obligations to provide health care services to its residents; and

(b) As a direct result of the COVID-19 public health emergency, Recipient has and continues to face significant negative economic impacts in operating the Health Facilities including both the reduction of operational revenues and incurring additional expenses related to COVID-19; and

(c) County has obtained funds from the United States Department of Treasury pursuant to section 603(b) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act of 2021 (“**ARPA**” or “**Act**”), specifically the Coronavirus Local Fiscal Recovery Funds (“**CLFRF**”) (hereinafter referred to as “**CLFRF Program**”); and

(d) On June 8, 2021, County, by and through the Kern County Board of Supervisors, considered and approved the Preliminary Allocation Plan for County’s Share of the Coronavirus Local Fiscal Recovery Fund which included providing \$10 million in fiscal support to Recipient for the purpose of mitigating the negative economic impact of COVID-19 and ensure operations of the Health Facilities to support vulnerable populations access to medical and public health services; and

(e) To respond to the direct public health emergency and economic impacts of COVID-19, County desires to grant to Recipient, who is located in a Qualified Census Tract, a portion of the total CLFRF Program funds allotted to County.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and adequacy of which are acknowledged, the County and Recipient agree to the following terms:

AGREEMENT:

1. Definitions

(a) "**Project**" means a COVID-19 related expense incurred post March 3, 2021, the operations of the Health Facilities to support vulnerable and/or disproportionately impacted populations access to medical and public health services, and any capital acquisition or construction to maintain or enhance operations of the Health Facilities to meet pandemic operational needs and support vulnerable and/or disproportionately impacted populations access to medical and public health services.

2. County's Maximum Financial Obligations

(a) County's maximum financial obligation under this Agreement shall not exceed TEN MILLION DOLLARS (\$10,000,000), and shall only be paid from CLFRF Program funds received by County from the United States Department of the Treasury. These funds shall be considered a grant to Recipient pursuant to this Agreement. Any funds not used for Project by Recipient as of December 31, 2024 shall be returned to County within five (5) days of such determination.

(b) Notwithstanding the foregoing, County's duty to pay Recipient under this Agreement is expressly contingent on Recipient retaining documentation of eligible costs. County, at its sole option, may terminate or suspend this Agreement if Recipient fails to comply with terms of the ARPA or in accordance with **Section 19: Termination**, of this Agreement. Recipient hereby agrees to and grants said option to County without reservation or claim for future cause of action based thereon.

(c) County may withhold funds from Recipient if Recipient, in County's sole determination, has not complied with provisions of the Act, federal regulations thereunder, terms of the CLFRF Program grant from the Government to County, the regulations of County promulgated to facilitate the administration of such grant, the terms of this Agreement, or any other statute or regulation applicable to the CLFRF Program or administration thereof. County agrees to inform Recipient within fifteen (15) calendar days if County becomes aware that Recipient is not in compliance with the foregoing.

3. Recipient's Obligations

(a) Recipient shall utilize the CLFRF Program funds granted by County in strict compliance with the terms of this Agreement and all applicable federal, state, and local laws, regulations, and ordinances.

(b) Upon request, Recipient must report to County all uses of CLFRF program funds and Recipient must demonstrate that the Project is a COVID-19 related expense incurred post March 3, 2021, the Project is aimed at providing a program or service for populations in a Qualified Census Tract or population that is disproportionately impacted by the pandemic related to public health or economic outcomes, and/or the provide support regarding how the Project will respond to an identified effect of COVID-19.

4. County's Obligations

- (a) County shall provide CLFRF Program funds for Project activities carried out by Recipient.
- (b) Disbursement shall be made by County to Recipient or its designee.
- (c) Recipient agrees that the Board of Supervisors of County or its designee is hereby empowered to make an independent determination as to eligible Project activities which have been acquired or completed, and any such determination is conclusive.
- (d) County shall process any payment under this Agreement with due diligence.

5. Compliance with Laws

(a) Recipient agrees to comply with the provisions of the ARPA, any amendments thereto, the federal regulations and guidelines now or hereafter enacted pursuant to the Act, terms of the CLFRF Program grant to County now or hereafter in effect, and the regulations now or hereafter enacted by County to facilitate its administration of the CLFRF Program grant in Kern County, or any other statute, regulation or guideline applicable to the CLFRF Program, including, without limitation, the requirements under 24 CFR part 576, 2 CFR Subpart B - General Provisions, Subpart C - Pre-Federal Award Requirements and Contents of Federal Awards, Subpart D - Post Federal and Award Requirements; Subpart E - Cost Principles, Subpart F - Audit Requirements, 2 CFR Part 25 - Universal Identifier and System for Award Management, 2 CFR Part 170 - Reporting Subaward and Executive Compensation Information, and 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension. Recipient shall become familiar with the applicable statutes, regulations and guidelines governing the CLFRF Program, each of which is made a part hereof and incorporated herein by this reference as if set forth in full.

(b) It is agreed that all provisions of State of California law applicable to public contracts (except to the extent California law may be waived and is waived by the parties or Recipient is otherwise exempt under Health and Safety Code section 101852 et seq.) are a part of this Agreement to the same extent as if set forth herein in full and shall be complied with by Recipient under this Agreement and any related agreements.

(c) Should County become subject to any sanctions, including but not limited to those enumerated at 24 CFR part 576.501, due to any failure by Recipient or Recipient's agents to comply with all Federal, State and local laws and regulations, Recipient hereby agrees without reservation to be liable for any such sanctions and shall fully reimburse County for any payments made or funding lost as a result of such sanctions.

(d) All references or citations to Federal, State, or local codes, statutes, rules, regulations or executive orders are effective and applicable to this Agreement only to the extent they are currently valid or as they are from time to time amended, repealed or superseded.

(e) In the event Recipient, or any Contractor(s) hired by Recipient, fails to comply with any of the obligations pursuant to this Agreement, including, but not limited to, use of CLFRF Program funds for ineligible Projects or any failure to comply with Federal, State or local codes, statutes, rules or regulations, Recipient agrees to re-pay CLFRF Program funds to County within five (5) business days of a determination in writing to Recipient that said funds are ineligible. Should Recipient fail to remit payment to County within five (5) business days, Recipient hereby authorizes the Kern County Auditor-Controller to transfer funds directly from any deposit accounts Recipient maintains with County, directly into County accounts in order to re-pay CLFRF Program funds in accordance with this Agreement.

(f) Notwithstanding the above, including the Eligible CLFRF Program Components set forth in subsection 1(b) of this Agreement, in the event the United States government determines that Recipient's uses of CLFRF Program funds are used for ineligible Projects, Recipient agrees to re-pay said CLFRF Program funds in accordance with section 5(e) of this Agreement.

6. Records and Administration

(a) Recipient shall comply with the policies, guidelines, and requirements of 2 CFR part 200, UNIFORM ADMINISTRATIVE REQUIREMENTS

(b) UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS as now in effect and may be amended from time to time, including without limitation, cost allocation plans, and procurement, as they relate to the acceptance and use of CLFRF Program funds by Recipient. In the event County determines that an intentionally false or fraudulent certified claim has or is being filed by Recipient, County, in its sole discretion, may immediately terminate this Agreement and/or Recipient shall reimburse County for any and all funds found to be improperly paid, as well as those reasonable costs, including attorney fees, associated with the investigation and recovery of the contested claims and/or amounts.

(c) Recipient agrees to maintain Project documents, records and accounts, personnel and financial records for a period of five (5) years, and submit such financial and performance reports as are required to assure a proper accounting of all Project funds, as required by the regulations adopted pursuant to the ARPA. Methods used to determine costs assigned to Project must conform to 2 CFR part 200 UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS as now in effect, with the exception of a five year retention period, and may be amended from time to time, and must not differ substantially from the methods used by Recipient to determine costs for other aspects of its operations or programs. Recipient shall provide for access during normal business hours to the Project records by Federal, State and County auditors, or their authorized agents, as may be deemed necessary to carry out their audit responsibilities. Recipient shall retain Project records for five (5) years after completion of Project, or until all related audit issues are resolved, whichever should occur later.

(d) County and Recipient shall comply with Recordkeeping and Reporting Requirements established at 24 CFR part 576.500, except that all records shall be retained for five (5) years.

7. Political Activity

Recipient agrees that no CLFRF Program funds shall be expended to finance any political activity in contravention of the Hatch Act of 1939, as amended, 5 U.S.C. 15 et seq.

8. Use of Grant Funds for Religious Purpose

Recipient will not engage in inherently religious activities as part of the CLFRF Program. Additionally, no otherwise qualified individual shall, solely by reason of his or her religion or religious belief, be excluded from the participation in, be denied the benefits of, or be subjected to, discrimination under any program funded by CLFRF Program funds.

9. Indemnification and Insurance

Recipient agrees to indemnify, defend, and hold harmless County and its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives, from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs and expenses (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, costs of staff time, and investigation costs) of whatever kind or nature ("**Claims**") which arise out of or are in any way connected with any act or omission of Recipient or its officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of County; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Recipient by any person or entity, and shall also include any Claims arising out of or relating to any claims or determinations that Recipient's use of funds was either ineligible under the CLFRF Program or unrelated to the impacts created by COVID-19.

Recipient acknowledges that Recipient, and all contractors hired by Recipient to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("**IRCA**"). Recipient is and shall remain in compliance with the IRCA and shall ensure that only contractors hired by Recipient to perform services under this Agreement are in compliance with the IRCA. In addition, Recipient agrees to indemnify, defend, and hold harmless the County, its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives, from any liability, damages or causes of action arising out of or relating to any claims that Recipient's employees or the employees of any subcontractor hired by Recipient, are not authorized to work in the United States for Recipient or its contractor and/or any other claims based upon alleged IRCA violations committed by Recipient or its subcontractor(s).

Recipient acknowledges that Recipient, and all subcontractors hired by Recipient to be compensated with CLFRF Program funds, will comply with the obligations and conditions set forth in this Agreement, including, but not limited to those expressly set forth in section 5, Compliance with laws. Recipient agrees to indemnify, defend, and hold harmless the County, its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives, from any liability, damages or causes of action arising out of or relating to any claims or determinations that Recipient or Recipient's subcontractors used CLFRF Program funds for ineligible Projects.

Recipient, in order to protect County and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Recipient's actions in connection with the performance of Recipient's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Recipient shall not perform any work under this Agreement until Recipient has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the County's authorized insurance representative. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Recipient shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. The Recipient shall promptly deliver to County a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to County not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Recipient shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Recipient or County as an additional insured.

a. Workers' Compensation and Employers' Liability Insurance Requirement

In the event Recipient has employees who may perform any services pursuant to this Agreement, Recipient shall submit written proof that Recipient is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

Recipient shall require any contractor or sub-contractor to provide workers' compensation for all of the contractor's or sub-contractor's employees, unless the contractor's or sub-contractor's employees are covered by the insurance afforded by Recipient. If any class of employees engaged in work or services performed under this Agreement is not covered by Labor Code section 3700, Recipient shall provide and/or require each contractor or sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

Recipient shall also maintain employers' liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

b. Liability Insurance Requirements

(1) Recipient shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Recipient's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Recipient shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement 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.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired, and non-owned vehicles used in the performance of services pursuant to this Agreement with combined limits for Bodily Injury and Property Damage liability of at least one million dollars (\$1,000,000) each occurrence.

(2) The Commercial General Liability and Automobile liability Insurance required herein shall include an endorsement naming the County and County's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided on ISO form CG 20 10 Edition date 11/85 or such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

(3) Any self-insured retentions in excess of ten thousand (\$10,000) must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County Risk Manager.

(4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, Recipient at its option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. Cancellation of Insurance — The above stated insurance coverages required to be maintained by Recipient shall be maintained until the completion of all of Recipient's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by the Recipient must be endorsed to provide that the coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-

payment of premiums, or 30 days written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. Recipient shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. 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 of a "A-; VII" rating. Any exception to these requirements must be approved by the County Risk Manager.

e. If Recipient is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Recipient shall provide coverage equivalent to the insurance coverages and endorsements required above. County will not accept such coverage unless County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Recipient is equivalent to the above-required coverages.

f. All insurance afforded by Recipient pursuant to this Agreement shall be primary to and not contributing to any other insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the County.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Recipient for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude County from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by Recipient to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Recipient. County, at its sole option, may terminate this Agreement and obtain damages from Recipient resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Recipient, County shall deduct from sums due to Recipient any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Recipient pursuant to this Agreement is insufficient to reimburse County for the premiums and any associated costs, Recipient agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by County to take this alternative action shall not relieve Recipient of its obligation to obtain and maintain the insurance coverages required by this Agreement.

i. Subcontractor Requirements

(1) If Recipient hires a consultant to provide professional services under this Agreement, Recipient shall require its consultant to provide Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.

(2) During the Project, Recipient shall require that all contractors hired by Recipient to perform work with CLFRF Program funds maintain the following insurance coverages at all times during the performance of said work:

(a) Commercial General Liability Insurance including Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work. The amount of said insurance coverage required by this Agreement 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.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired, and non-owned vehicles, with combined limits for Bodily Injury and Property Damage liability of at least one million dollars (\$1,000,000) each occurrence.

10. Assignment

Recipient shall not assign any right, title or interest it may acquire by reason of this Agreement except upon first obtaining the written consent of the County.

11. Remedies

No right or remedy herein conferred on or reserved to County 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 therewith or from time to time.

12. Non Waiver

No covenant or condition of this Agreement to be performed by Recipient can be waived except by the written consent of County. Forbearance or indulgence by County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Recipient. A waiver of one covenant or condition by County does not grant or imply a waiver of any other covenant or condition to be performed by Recipient. County shall be entitled to invoke any remedy available to County under this Agreement or by law or in equity despite said forbearance or indulgence.

13. Incorporation of Prior Agreements and Amendments

This Agreement, including all attachments hereto and any reference to pertinent Federal or State laws and regulations, 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. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

14. Severability

Should any part, term, portion or provision of this Agreement be finally decided 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.

15. Signatory Authority

Each individual executing this Agreement on behalf of each party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

16. Modifications or Changes

The terms of this Agreement may only be modified by the written consent of the parties hereto.

17. 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.

18. Term of Agreement

The term of this Agreement shall commence as of the Effective Date and shall terminate December 31, 2024. Notwithstanding the foregoing, this Agreement shall be in effect only during such time as County maintains its CLFRF Program in effect in Kern County under the CLFRF Program Grant to County, except that the obligations of Recipient pursuant to **Section 6** and the first paragraph of **Section 9** shall survive the termination or expiration of this Agreement.

19. Termination

Notwithstanding **Section 18**, above, County and Recipient each reserve the right to terminate this Agreement according to the standards and requirements found at 2 CFR 200.339 upon giving thirty (30) days' notice to the other party. In the event this Agreement is terminated, Recipient shall furnish to County the results of its work or copies of any and all documents relating to Project in Recipient's possession up to the date of termination. Recipient's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement and provide grounds for immediate termination of the Agreement.

20. Execution

This Agreement is effective upon the Effective Date. It is the product of negotiation and

all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

21. Notices

Notices shall be sufficiently given hereunder if personally served in writing upon the Clerk of the Board of Supervisors of County or to Recipient or if sent by the United States mail, postage prepaid, as follows:

If directed to County:

County Administrative Office
County Administrative Center
1115 Truxtun Avenue, Fifth Floor
Bakersfield, California 93301

If directed to Recipient:

Kern County Hospital Authority
Attn: Russell V. Judd, CEO
1700 Mount Vernon Avenue
Bakersfield, California 93306

22. Venue

This Agreement has been entered into and is to be performed in the County of Kern, California. Accordingly, the parties agree that the venue of any action relating to this Agreement shall be brought in the County of Kern.

23. Opinions and Determinations

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, discretion, option, or determination of either County or Recipient, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, discretion, option, or determination to be arbitrary, capricious, or unreasonable.

24. No Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement, shall be strictly reserved to County and Recipient. 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 County and Recipient that any such person or entity, other than County and Recipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

25. Prohibited Interest of Officials and Employees

In addition to the conflict of interest requirements in OMB Circulars A-102 and A-110, no person who is an employee, agent, consultant, officer, or elected or appointed official of County, or Recipient (or of any designated public agency) that receives CLFRF Program funds and who exercises any functions or responsibilities with respect to the CLFRF Program during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed pursuant to this Agreement. Recipient shall incorporate or cause to be incorporated, in all contracts or subcontracts, relating in any manner to this Agreement, a provision prohibiting such interest.

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

26. Audit

In the event Recipient expends at least seven hundred fifty thousand dollars (\$750,000) in federal financial assistance in any single fiscal year, from all sources combined, it shall arrange at its own expense for performance of an audit in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F, incorporated herein by this reference as if set forth in full.

The results of the audit must be submitted to County within thirty (30) days of completion. Acceptance of Recipient's audit reports by County does not prohibit County from performing any additional audit work required to follow up on findings, as deemed necessary by County, or as necessary for County to comply with any administrative or audit requirements imposed by the Federal or State government.

27. Other Federal Requirements

Use of CLFRF Program funds must comply with the following additional requirements:

(a) Definitions:

1. **Government** means the United States of America and any executive department or agency thereof.

2. **Third Party subcontract** means a subcontract at any tier entered into by Recipient or subcontractor, financed in whole or in part with Federal assistance originally derived from CLFRF Program funds.

(b) Federal Changes

1. Recipient shall at all times comply with all applicable regulations, policies, and procedures, as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326, excepting that all records documenting qualified expenses must be retained for five (5) years, and more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is included herein by reference. Recipient's failure to so comply shall constitute a material breach of this contract.

2. Recipient agrees to include the above clause in each third party subcontract financed in whole or in part with CLFRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(c) Access to Records

1. Recipient agrees to provide County, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of Recipient which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

2. Recipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. Recipient agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than five (5) years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date County makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Recipient agrees to maintain same until County, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

4. The requirements set for in paragraphs 1, 2, and 3 above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in **Section 6** and **Section 26** of the Agreement.

(d) Debarment and Suspension

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Recipient is required to verify that none of Recipient, its contractors, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. Recipient represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Recipient agrees that neither Recipient nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party

subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code, § 4477.

3. Recipient must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid and throughout the period of any contract that is funded by CLFRF Program funds and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Recipient agrees to the provisions of the below, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions. For purposes of this Agreement and the Debarment, Suspension, Ineligibility and Voluntary Exclusion Certification, Recipient is the “prospective lower tier participant.”

4. Recipient agrees to include paragraphs 1 and 2 above in each third party subcontract financed in whole or in part with Federal assistance provided by CLFRF Program funds. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5. This certification is a material representation of fact relied upon by County. If it is later determined that Recipient did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, County, and the Government may pursue available remedies.

(e) No Government Obligations To Recipient

1. County and Recipient acknowledge and agree that, notwithstanding any concurrence by the Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Government, the Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to County, Recipient, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.

2. Recipient agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by CLFRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(f) Equal Employment Opportunity Compliance (applicable to all construction contracts awarded meeting the definition of “federally assisted construction contract” under 41 CFR 61-1.3)

Recipient agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60.14 is hereby incorporated by reference.

During the performance of this Agreement, Recipient agrees as follows:

1. Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. Recipient will, in all solicitations or advertisements for employees placed by or on behalf of Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. Recipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Recipient's legal duty to furnish information.

4. Recipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Recipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Recipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. Recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by

the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of Recipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Recipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. Recipient will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Recipient will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Recipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Recipient may request the United States to enter into such litigation to protect the interests of the United States.

Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as

may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to Recipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(g) Anti-Kickback Act Compliance (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36 (i)(4))

Recipient agrees to comply with the Copeland “Anti-Kickback” Act 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

Subcontracts. Recipient or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Government may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(h) Davis-Bacon Act Compliance (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Recipient agrees that all transactions regarding this Agreement will comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements by Department of Labor regulations (29 CFR Part 5) as set forth below.

1. Recipient shall be bound to the provisions of the Davis-Bacon Act and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>. Recipient shall pay wages not less than once a week.

2. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Kern.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

(i) Contract Work Hours and Safety Standards (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

1. Compliance. Recipient agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

2. Overtime. No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

3. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of Paragraph 2, Recipient and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, Recipient and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph 2 in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph 2.

4. Withholding for unpaid wages and liquidated damages. County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Recipient or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph 3 of this section.

5. Subcontracts. Recipient or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

(j) Notice of Reporting Requirements

1. Recipient acknowledges that it has read and understands the reporting requirements of Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.

2. Recipient agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by CLFRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(k) Notice of Requirements Pertaining to Copyrights

1. Recipient agrees that the Government shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Government purposes:

- (i) The copyright in any work developed with the assistance of funds provided under this Agreement;
- (ii) Any rights of copyright to which Recipient purchases ownership with the assistance of funds provided under this Agreement.

2. Recipient agrees to include paragraph 1 above in each third party subcontract financed in whole or in part with Federal assistance provided by CLFRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(l) Patent Rights (applicable to contracts for experimental, research, or development projects financed by CLFRF Program funds; 44 CFR §13.36(i)(8))

1. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, County and Recipient agree to take actions necessary to provide immediate notice and a detailed report to the Government.

2. Unless the Government later makes a contrary determination in writing, irrespective of Recipient's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), County and Recipient agree to take the necessary actions to provide, those rights in that invention due the Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.

3. Recipient agrees to include paragraphs 1 and 2 above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by CLFRF Program funds.

(m) Energy Conservation Requirements

1. Recipient agrees to comply with mandatory standards and policies relating to

energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

2. Recipient agrees to include paragraph 1 above in each third party subcontract financed in whole or in part with Federal assistance provided by CLFRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(n) Clean Air and Water Requirements (applicable to all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year)

1. Recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to Government and the Regional Office of the Environmental Protection Agency (EPA).

2. Recipient agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Government and the appropriate EPA regional office.

3. Recipient agrees to include paragraph 1 and 2 above in each third party subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by CLFRF Program funds.

(o) Termination for Convenience of County (applicable to all contracts in excess of \$10,000)

See **Section 19** of the Agreement.

(p) Termination for Default (applicable to all contracts in excess of \$10,000)

See **Section 19** of the Agreement.

(q) Changes

See **Section 16** of the Agreement.

(r) Lobbying (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)

1. Recipient shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. Recipient agrees to the provisions of the below, Certification Regarding Lobbying, (applicable for contracts or subcontracts in excess of \$100,000).

3. Recipient agrees to include paragraphs 1 and 2 above in each third party subcontract financed in whole or in part with Federal assistance provided by CLFRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(s) MBE/WBE Requirements

Recipient shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the Agreement.

PRIME Recipient RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

"GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If Recipient fails to take the steps outlined below, it shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the Agreement.

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;

2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

6. If subcontracts are to be let, Recipient shall take the affirmative steps listed in 2 CFR 200.321.

(t) Procurement of Recovered Materials (2 CFR 200.322)

Recipient shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this Agreement, Recipient shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (1) competitively within a timeframe providing for compliance with the contract performance schedule; (2) meeting contract performance requirements; or (3) at a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(u) Incorporation of Uniform Administrative Requirements

The preceding provisions include, in part, certain standard terms and conditions required by Government, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by Government are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Government mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Recipient shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause County to be in violation of the Government terms and conditions.

(v) Program Fraud and False or Fraudulent Statements or Related Acts

Recipient acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Recipient's actions pertaining to this Agreement.

(w) Drug-Free Workplace Act of 1988

Recipient, in executing this Agreement certifies that it and any of its agents or subcontractors will maintain a drug-free workplace in accordance with the requirements of 2 CFR 182.

[[The remainder of this page intentionally left blank.]]

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Government from participating in transactions involving Federal funds. Recipient is required to sign the certification below which specifies that neither Recipient nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Recipient will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48

CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Recipient's Signature

Date

[[The remainder of this page intentionally left blank.]]

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Recipient's Signature

Date

[[Signature page follows.]]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers and agents hereunto duly authorized as of the day and year first above written.

APPROVED AS TO CONTENT:

COUNTY OF KERN

BY _____

BY _____

Chairman
Board of Supervisors

"County"

APPROVED AS TO FORM:
Office of County Counsel

KERN COUNTY HOSPITAL AUTHORITY

Employer's Identification Number
47-5618278

BY _____
Deputy

BY _____

Chairman
Board of Governors

"Recipient"

APPROVED AS TO CONTENT:

BY _____

Russell V. Judd
Chief Executive Officer

REVIEWED ONLY
NOT APPROVED AS TO FORM:

BY _____

Karen S. Barnes
Vice President & General Counsel
Kern County Hospital Authority



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

August 18, 2021

SUBJECT: Proposed Rescission of Amendment No. 2 to Agreement 147-2019 with the County of Kern for the Provision of Health Care Services at the Kern Justice Facility

Requested Action: Approve

Summary:

Kern Medical is requesting that your Board rescind Amendment No. 2 to Agreement 147-2019 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, for the provision of health care services to adult inmates detained in the Kern Justice Facility.

On June 16, 2021, your Board approved Amendment No. 2 to extend the duration of services for one year from July 1, 2021 through June 30, 2022. Subsequent to your Board's approval of Amendment No. 2, the California Department of Corrections and Rehabilitation (CDCR) notified the County that CDCR's consent is required on any agreement related to the Kern Justice Facility pursuant to the Facility Sublease between the CDCR and the County and the County's certificate to the Tax Certification referenced therein, necessitating that Amendment No. 2 be rescinded and replaced with a new agreement. The Board of Supervisors never approved the Amendment. Therefore, no notice of rescission to the County is required.

Therefore, it is recommended that your Board rescind Amendment No. 2 to Agreement 147-2019.



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

August 18, 2021

SUBJECT: Proposed retroactive Medical Services Agreement with the County of Kern for Health Care Services at Kern Justice Facility

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting your Board retroactively approve the proposed Agreement with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, for the provision of health care services to adult inmates detained in the Kern Justice Facility.

On May 12, 2018, the Kern County Sheriff's Office opened the Kern Justice Facility. Kern Medical entered into an agreement with the County for the provision of medical services at the Kern Justice Facility initially for the period May 12, 2018, through June 30, 2020. Amendment No. 1 extended the term of that agreement for one year from July 1, 2020, through June 30, 2021. Amendment No. 2, approved by your Board on June 16, 2021, likewise extended the term for an additional period of one year from July 1, 2021 through June 30, 2022.

Subsequently, the California Department of Corrections and Rehabilitation (CDCR) notified the County that CDCR's consent is required on any agreement related to the Kern Justice Facility pursuant to the Facility Sublease between the CDCR and the County and the County's certificate to the Tax Certification referenced therein, necessitating that Amendment No. 2 to Agreement 038-2018 be rescinded and replaced by this Agreement.

The proposed Agreement, which is virtually identical to the 2018 agreement, is for a term of one year from July 1, 2021 through June 30, 2022. Compensation for the provision of services provided by Kern Medical is established by an annual budget each fiscal year, as agreed upon by Kern Medical and the County.

Therefore, it is recommended that your Board retroactively approve the Medical Services Agreement for the provision of health care services at Kern Justice Facility from July 1, 2021 through June 30, 2022, and authorize the Chairman to sign.

KERN COUNTY JUSTICE FACILITY MEDICAL SERVICES AGREEMENT

(County of Kern – Kern County Hospital Authority)

This Kern County Justice Facility Medical Services Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 2021, by and between the Kern County Hospital Authority (“Authority”), a local unit of government, which owns and operates Kern Medical Center (“KMC”), and the County of Kern (“County”), a political subdivision of the state of California, on behalf of the Administrative Office (“CAO”), and the Kern County Sheriff’s Office (“Sheriff”).

RECITALS

(a) Sheriff is required by law to provide health care services to in-custody adult inmates housed in the Kern County Justice Facility (“Facility”); and

(b) The CAO and Sheriff desire to engage Authority to provide said services through KMC, and Authority by reason of its qualifications, experience, and expertise for doing the type of work herein contemplated, has agreed to provide the required services on the terms and conditions set forth herein; and

(c) This Agreement relates solely to services provided by KMC to in-custody adult inmates housed in Facility;

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:

1. Term of Agreement; Records at Termination of Agreement.

1.1 Term of Agreement. This Agreement will be effective as of July 1, 2021, and remain in effect through June 30, 2022, unless the Kern County Board of Supervisors has selected a replacement provider of healthcare services to adult inmates under the responsibility of Sheriff.

1.2 Records at Termination of Agreement. If this Agreement is terminated KMC shall submit to County all files, recording, memoranda, documents, correspondence, and other items generated in the course of performing this Agreement, within fifteen (15) days of the effected date of any written Notice of Termination; except that all original medical files, both electronic and hard copy, will be maintained at Facility, identified by KMC, and available to Sheriff as of the date of expiration or termination.

2. **Scope of Services.** KMC will provide Sheriff those services set forth in Exhibit “A,” Scope of Work, attached hereto and incorporated herein by this reference. In compliance with title 22, California Code of Regulations, section 70713, KMC will retain professional and administrative responsibility for services rendered under this Agreement. County will work collaboratively with KMC in matters pertaining to said responsibility.

3. **Equipment and Facilities.**

3.1 Sheriff will provide space, routine custodial services, routine building maintenance, housekeeping, linen, computer lines, furniture, fixtures, utilities, telephones, modem and fax lines, security, and other similar items necessary for the efficient operation of the health care delivery system at Facility. Any equipment purchased by KMC for use in Facility shall remain the property of County upon termination of this Agreement. KMC shall be responsible for the maintenance of any equipment it purchases for use in Facility as long as this Agreement remains effective. Equipment purchases shall be included as part of the budget described in section 5 herein. Within 30 days of the effective date of this Agreement, Sheriff and KMC shall prepare a list of all equipment and inventory items at Facility.

3.2 KMC will provide and pay for all reasonably necessary medical equipment and supplies, including, but not limited to, medications, including over-the-counter medications, drugs, dressings, instruments, and gloves used in the health care units. KMC will be responsible for the routine delivery of medications to Facility. Sheriff will arrange for the disposal of contaminated and bio-hazardous waste in accordance with local, state, and federal laws.

3.3 KMC is authorized to use the medical, office, computer, and other equipment of Sheriff in the designated work areas, and KMC agrees to safeguard such equipment. Said equipment is to be used only by those trained and qualified in its use. KMC will reimburse Sheriff for all damages or losses resulting from the negligent or careless use by KMC personnel of said equipment or other property or facilities of Sheriff.

3.4 KMC will provide all office supplies and forms necessary to perform the services required of KMC under this Agreement, unless otherwise agreed to by Sheriff.

3.5 Sheriff will provide routine, non-emergency inmate medical/dental transportation. KMC is responsible for arranging emergency transportation. Except as otherwise provided herein, KMC is responsible to determine the need for emergency versus non-emergency transportation. Sheriff or designee may require emergency transportation in his or her discretion.

4. **Hours and Personnel.**

4.1 KMC will maintain minimum staffing patterns, hours, and availability of personnel such that KMC personnel will be available 24 hours a day, seven days a week. Notwithstanding the minimum staffing level, it is the responsibility of KMC to supply adequate

staff and other resources necessary to provide all medical and dental services for Facility inmates in accordance with this Agreement. KMC will coordinate the provision of care provided to all Facility inmates. Should KMC experience vacant positions or staff absenteeism, minimum staffing levels and availability of personnel will be maintained through the use of employee overtime or employee substitution. Personnel assigned to fill vacant positions or absences will be at the appropriate level of licensure and will be competent to perform all aspects of the assignment. The hours and availability of personnel may be modified upon the mutual written agreement of the parties.

4.2 KMC personnel who provide professional medical services will be duly licensed in the state of California, except for residents and interns who follow a course of training authorized by KMC. Such personnel will practice medicine in accordance with accepted standards of practice of medical providers in good standing in the community.

4.3 KMC will appoint a Clinical Director and a Responsible Physician to monitor the quality of health care provided and supervise the practice of nurse practitioners or other ancillary personnel. KMC will designate an alternate person to discharge such responsibilities in the temporary absence of either the Clinical Director or Responsible Physician.

4.4 Copies of licenses or records of certification for all KMC personnel will be updated annually and made available for examination by Sheriff upon reasonable request.

4.5 KMC will be responsible for time and attendance accountability for all KMC personnel providing care at Facility and will provide appropriate records to the CAO upon reasonable request.

4.6 Sheriff reserves the right to perform background and security checks of assigned KMC personnel, including substitution and temporary employees, as a condition of granting such personnel access to Facility. Sheriff will have the sole discretion to determine security acceptability of all KMC personnel at any time during the term of this Agreement. Personnel found to be an unacceptable safety or security risk will not be given access to Facility.

4.7 All assigned KMC personnel will wear identification badges, visible at all times, issued by Sheriff.

4.8 All services will be performed to the satisfaction of the CAO and Sheriff. The CAO and Sheriff will be reasonable in making such determination.

4.9 KMC will be responsible for the medical costs for those inmates who have been both formally and physically booked into the Central Receiving Facility and Facility, unless the nature of the medical emergency prevents formal booking and the inmate is brought to KMC. KMC will not be responsible for pre-booking medical costs under any circumstances at any location other than KMC. To the extent feasible, KMC will pre-screen all inmates at the Inmate

Reception Center booking area, for booking and clearance and in all cases of life threatening emergencies where first aid is required.

4.10 KMC will continue to provide medical services to inmates, in accordance with this Agreement, in the event of unusual or catastrophic occurrences, such as concerted labor actions including strikes, riots, fires, extended power failures or equipment breakdowns, natural disasters and the like, which result in the disruption of normal medical service operations; provided however, that KMC will not be deemed to be in breach of this Agreement if performance hereunder is made impossible by such occurrences. In the event and to the extent that KMC suffers major financial losses due to such emergency circumstances, the CAO will negotiate equitable compensation.

4.11 KMC will collaborate with Sheriff regarding the provision of appropriate and adequate bilingual services for medical purposes, including Spanish-speaking personnel for monolingual inmates.

5. **Compensation.**

5.1 **Base Compensation.** The total base compensation for performance of the services described herein will be established by an annual budget submitted by KMC to the CAO for review by April 1 each fiscal year (until the first annual budget is established under this Agreement, the parties agree to operate under the budget currently in place). The annual budget will include, but not be limited to the following support documents: revenue and expense variance report (budget vs. actual); detailed position summary highlighting requested additional and deleted positions as well as total salary and benefit costs; detailed list of supplies expenses; detailed list of inpatient and outpatient costs; detailed list of ambulance costs; detailed list of pharmacy costs to include a breakout of psychotropic medicine costs; detailed list of offsetting state Medi-Cal reimbursement for services rendered; and detailed list of capital assets. Final approval of the annual budget shall be decided by the Kern County Board of Supervisors during County's annual budget adoption meeting. The annual budget is set forth in Exhibit "C," attached hereto and incorporated herein by this reference.

5.2 **Changes in Base Compensation.** Any requested changes in base compensation will be submitted by KMC to the CAO for review. In the event that funding is not provided to cover increased costs, KMC may submit a plan of proposed services to match the funding level.

5.3 **Exceptions to Base Compensation.**

5.3.1 In the event that actual costs of providing services for any individual inmate exceeds \$500,000, a semiannual review will be conducted by KMC and provided to the CAO highlighting any individual cases exceeding this amount in order to determine the appropriateness of providing additional funding to KMC. KMC shall be responsible for identifying cost-mitigation actions for extraordinary cases that threaten

the adopted budget as approved by methods set forth in section 5.1 of this Agreement. KMC shall track inmate inpatient costs that qualify for Medi-Cal reimbursement and shall implement a methodology consistent with the state requirements to draw down payments for inmate inpatient care eligible for Medi-Cal reimbursement.

5.3.2 KMC will not be financially responsible for the cost of any medical treatment or health care services provided to any individual at any location other than KMC, prior to the individual's formal booking. Once an individual has been both formally and physically booked into Central Receiving Facility and Facility, KMC will assume financial responsibility for the medical care of the inmate, subject to the limitations set forth in subparagraph 5.3.1.

5.3.3 The financial obligation of KMC is limited to existing programs and services in Facility.

5.3.4 If Sheriff either (a) orders an emergency ambulance transport, or (b) directs an ambulance to transport an inmate to a facility other than KMC, without first consulting KMC, and it is later determined by KMC that a life-threatening emergency situation did not exist, KMC will not be responsible for the cost of the emergency ambulance transport, nor will KMC be responsible for the cost of medical care provided at the other facility. In such cases, Sheriff will reimburse KMC for the documented costs incurred by KMC for the emergency ambulance transport and the medical care provided at the other facility.

5.4 Adjustment of Price. Ongoing changes in contractual provisions or services to be furnished under this Agreement may be made only in writing and must be approved by the CAO and KMC. Should a decision be made to increase or decrease the scope of services under this Agreement, the CAO and KMC will mutually agree to an adjusted contract price.

5.5 Increased Staffing. KMC agrees the CAO may require KMC to provide additional staffing, benefits, products, or services on an intermittent basis. In such cases, KMC will be reimbursed for the actual direct costs of such services, which costs shall be agreed to by the CAO prior to being incurred by KMC.

6. Method of Payment.

6.1 Base Compensation. KMC will receive the base compensation in four (4) equal quarterly payments. Base compensation quarterly payments will be credited during the first month of each fiscal quarter.

6.2 Increased Staffing. If the CAO requires KMC to provide additional staffing pursuant to paragraph 5.5, then KMC will calculate the cost of the additional staffing and include said costs in a quarterly report to the CAO.

7. **Compliance with Standards.** At all times during the term of this Agreement, KMC will (a) provide health services that comply with title 15, California Code of Regulations, Minimum Standards for Local Detention Facilities and (b) comply with all applicable County, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, including those relating to medical and dental services in local detention facilities in the state of California. If funding or staffing levels do not permit adherence to these standards, KMC will notify the CAO. Any deficiencies discovered by state or federal regulators must be documented by KMC and promptly reported to the CAO and Sheriff along with a corrective action plan prepared by KMC to address the deficiencies.

8. **Representations.** KMC makes the following representations, which are agreed to be material to and form a part of the inducement for this Agreement: (a) KMC has the expertise, support staff and facilities necessary to provide the services described in this Agreement; (b) KMC will diligently provide all required services in a timely and professional manner in accordance with the terms and conditions stated in this Agreement; and (c) KMC warrants that all work will be performed in accordance with generally accepted health care practices as well as the requirements of applicable federal, state and local laws.

9. **Termination.** The CAO or Sheriff, with the approval of the Kern County Board of Supervisors, may terminate this Agreement without cause by written notice. A written Notice of Termination will be deemed effective on the date set forth as part of the Board of Supervisors action to terminate this Agreement. In the event of termination, KMC will be reimbursed for all services satisfactorily rendered by KMC up to the effective date of termination. KMC may terminate this Agreement, upon mutual written consent, with notice to County of no fewer than 50 days to prevent an interruption to services.

10. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written agreement of County and Authority.

11. **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. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by personal service.

Notice to County:

County of Kern
Administrative Center
1115 Truxtun Avenue, Fifth Floor
Bakersfield, CA 93301
Attn.: County Administrative Officer

Notice to Sheriff:

Kern County Sheriff's Office
1350 Norris Road
Bakersfield, CA 93308
Attn.: Sheriff-Coroner

Notice to Authority:

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

12. **Confidentiality.**

12.1 Authority shall not, without the written consent of County, communicate confidential information, 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 it would protect its own confidential information, unless such 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 12 shall continue to survive.

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

13. **Assignment and Subcontracts.** KMC will not assign any interest in this Agreement or subcontract any of the services KMC is to perform hereunder without the prior written consent of County, which consent will not be unreasonably withheld.

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

15. **Audits, Inspection and Retention of Records.** KMC agrees to maintain and make available to the CAO accurate books and records relative to all its activities under this Agreement. KMC shall permit CAO to audit, examine and make excerpts and transcripts from

such records, and to conduct audits of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. KMC shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last.

16. **Access to Books and Records.** To the extent applicable, until the expiration of four (4) years after the expiration or termination of this Agreement, the parties shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services (“Secretary”) or the Comptroller General of the United States General Accounting Office (“Comptroller General”), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services the parties provided under this Agreement. Each party further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

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

18. **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.

19. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. The parties 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. The parties acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

20. **Disqualified Persons.** Each party represents and warrants that it and its 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 each party shall immediately notify the other party in writing 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 thereof.

21. **Indemnification and Hold Harmless.**

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

21.1.1 the ownership or operation of KMC by Authority after the date hereof, or the performance by Authority or KMC, their respective agents, contractors, or assigns in performing the obligations under this Agreement;

21.1.2 any breach or the nonfulfillment of any covenant, agreement or other obligation of Authority or KMC set forth in this Agreement or in the performance, or failure to perform, of any of the services to be performed by Authority or KMC pursuant hereto;

21.1.3 any liabilities or obligations arising out of or in connection with any claims, litigation or proceedings related to KMC or Authority’s operation thereof for acts or omissions which allegedly occurred after the date hereof;

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

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

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

21.2.1 any breach or the nonfulfillment of any covenant, agreement or other obligation of the County set forth in this Agreement or in the performance, or failure to perform, of any of the services to be performed by County pursuant hereto; or

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

21.3 Notice and Claims. Section 8.3 (Notice and Claims) of the Transition Services Agreement by and between County and Authority dated May 10, 2016, is hereby incorporated herein by reference.

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

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

21.6 Nothing in this section 21 or elsewhere in this Agreement shall be construed as imposing any personal liability on any elected or appointed officials, managers, directors, officers, employees, agents, successors and assigns of County or Authority for the acts or omissions of County or Authority, respectively, under this Agreement.

22. **Insurance.** The parties self-insure as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Any self-insuring party, upon request of the other party, shall forward documentation to the requesting party that demonstrates to the requesting party's satisfaction that the party self-insures as a matter of normal business practice before commencing the services provided hereunder. Either party will accept reasonable proof of self-insurance comparable to the above requirements.
23. **Non-appropriation.** The parties reserve the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, the terminating party will be released from any further financial obligation to the other party, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. The terminated party will be given 30 days' prior written notice in the event that a party requires such an action.
24. **Nondiscrimination.** Neither party, nor any officer, agent, employee, servant or subcontractor of party shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.
25. **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.
26. **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.
27. **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.
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 the parties hereto. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the parties that any such person or entity, other than the parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

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

30. **Importing Inmates from other Jurisdictions.** Sheriff agrees not to house any federal inmates or state contract inmates from any state or other county facility into Facility.

31. **Subordination.** This Agreement: (i) in all respects is subordinate and subject to the terms of the Indenture, the Site Lease, the Facility Lease and the Facility Sublease (including but not limited to re-letting rights) related to the State Public Works Board and the State of California Lease Revenue Bonds (Department of Corrections and Rehabilitation) 2018 Series A (Kern Jail Complex); (ii) is subject to review and written consent of the State Public Works Board and Department of Corrections and Rehabilitation prior to execution, as is any amendment or modification thereto; and (iii) shall be terminable by the County, Authority, or at the direction of the State Public Works Board upon fifty (50) days' notice, without penalty or cause.

32. **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.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Supervisors

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
ADMINISTRATIVE OFFICE

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Ryan J. Alsop
County Administrative Officer

By _____
Russell V. Judd
Chief Executive Officer

KERN COUNTY SHERIFF'S OFFICE

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Donny Youngblood
Sheriff-Coroner

By _____
Vice President & General Counsel
Kern County Hospital Authority

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By _____
Chief Deputy

CONSENTED TO (Pursuant to a Facility
Sublease Dated April 1, 2018, between the
Department of Corrections and Rehabilitation of
the state of California and the County of Kern
and the County certificate to the Tax
Certification referenced therein)

STATE PUBLIC WORKS BOARD OF THE
STATE OF CALIFORNIA

By _____
Koreen H. van Ravenhorst
Deputy Director

DEPARTMENT OF CORRECTIONS AND
REHABILITATION OF THE STATE OF
CALIFORNIA

By _____
Chris Lief
Deputy Director

EXHIBIT “A”

SCOPE OF WORK

1. Administrative and Support Services

(A). HEALTH AUTHORITY AND ADMINISTRATION

(1). Health Authority; Title 15, Section 1006

KMC will appoint a single on-site health authority who will be responsible for correctional healthcare. According to job description and contractual arrangements, the Responsible Physician will work with Facility administration, the Clinical Director and his/her staff in:

1. Developing policy for healthcare administration to include all medical and dental health services;
2. Identifying healthcare providers for the defined scope of services;
3. Establishing written agreements as necessary to provide access to healthcare;
4. Developing mechanisms to assure that those agreements are properly monitored;
5. Establishing systems for coordination among healthcare providers; and
6. Arranging for all levels of health care and assuring quality and accessibility of all services.

The Responsible Physician, in conjunction with other physicians, nurse practitioners, physician assistants, registered nurses and ancillary staff will provide for the physical and mental well-being of the correctional population. The Responsible Physician will work in cooperation with Facility administration and the Clinical Director, and will hold ultimate responsibility for all final medical judgments and the development of policy/procedures in healthcare matters involving clinical judgments. On-site staff, equipment, supplies, materials and resource manuals will be adequate for the level of care agreed upon with Facility administration. KMC will provide as many services as possible within Facility and will delineate in writing those services that will be available at KMC or through community providers. Healthcare services will meet the minimum requirements of title 15. Healthcare services will be available at a level to address acute symptoms and/or conditions and avoid deterioration of health while in correctional confinement.

(2). Medical Autonomy; Title 15. Sections 1200 and 1204

Medical autonomy will be maintained at Facility through the following processes:

1. All matters of medical and dental healthcare will be determined as directed and approved by the Responsible Physician and attending dentist respectively;

2. Policies and procedures will be in place to address all healthcare processes according to title 15 regulations;
3. Medical staff will collaborate with custody staff to assure that all tests, treatments and procedures ordered by licensed personnel under the authority of the Responsible Physician and/or dentist will be completed;
4. Security policies and procedures that are applicable to custody staff will also apply to healthcare personnel;
5. All healthcare staff will receive documented training at the time of hire and will be held accountable for these measures;
6. Documented training and/or educational materials will be provided for custody staff at the time of hire regarding the duties and responsibilities of the healthcare staff;
7. Healthcare personnel will not use medical treatment for punitive reasons; and
8. If security matters present a conflict with a medical treatment plan, the issue will be discussed jointly for an alternative. The Responsible Physician will approve any modification in approach to ensure the welfare of individual inmates is protected.

(3). Administrative Meetings and Reports; Title 15, Sections 1202 and 1403

KMC recognizes the long-term collaborative relationship with Sheriff and is committed to continuing and improving the services required for inmates in Facility. Through this ongoing partnership, KMC will provide quality medical care that is efficient and cost effective to inmates in Facility.

KMC shall develop and implement a written plan for quarterly statistical summaries of health care and pharmaceutical services that are provided. The Responsible Physician shall establish a mechanism to assure that the quality and adequacy of these services are assessed quarterly. The plan shall include a means for the correction of identified deficiencies of the health care and pharmaceutical services delivered. Based on information from these audits, KMC shall provide Sheriff with a quarterly and annual written report on health care and pharmaceutical services delivered.

Communication between all parties is the key to achieving mutual healthcare goals. The following committees are recommended. Final decisions regarding specific committees and reporting structure will be made collaboratively with Facility administration.

QUARTERLY HEALTHCARE SERVICES COMMITTEE MEETINGS

Quarterly meetings with Sheriff will be performed as the Healthcare Services Committees. Administrative/management representatives from all facilities, pharmacy representatives,

medical administrative/management representatives, and other service representatives such as public health or dental may be invited to attend as appropriate.

The committee will have the overall responsibility for developing, recommending and implementing all policies and procedures necessary to ensure that the healthcare programs' goals and objectives are fulfilled and that all applicable regulations, standards and environmental factors which may affect healthcare services are considered. KMC will assume the day-to-day management responsibility for ensuring full compliance with established policies and procedures, and report to the committee quarterly on performance in this regard.

Routine statistical reports will be presented at quarterly Healthcare Services meetings, or at intervals as determined by Facility administration. The reports will reflect operational, risk management, utilization and quality data as specifically indicated in pertinent subsections below. In addition, any other information mutually agreed upon or requested by Facility administration will also be presented.

An annual report will be submitted to Sheriff through the quarterly Healthcare Services Committee in order to summarize trends for comparison with previous years for quality management, cost containment, risk management purposes and strategic planning. This report will outline statistical data related to the frequency of services provided and highlight problems identified by the internal processes that assess the quality and adequacy of clinical services. Trends will be identified and recommendations for resolving identified problems will be made with an overall understanding of issues facing the health services system. Performance improvement activities will be discussed in the annual report to assure ongoing consistency, quality and adequacy of services.

OTHER FACILITY MEETINGS

Monthly Medical Audit/Risk Management and Utilization Committee: Healthcare staff and Facility staff administration designees will meet monthly for the purpose of closely analyzing risk, utilization and infection control data in order to determine necessary actions. The specific function of the Committee and projected data analysis to be performed by the Committee is described in Section 1, parts (16) Medical Audits, (17) Risk Management, and (18) Utilization Management Program.

Quality Management Committee: The Quality Management Committee will be composed of staff appointed by Facility administration, KMC healthcare staff, quality designee, medical clinicians, healthcare staff and Facility administration designees. The function of the committee will be to address quality issues as described in Section 1, part (5) Quality Management.

Pharmacy and Therapeutics Committee (P&T): Pharmacists, medical staff, and care providers along with Facility administration designees will meet on a quarterly basis. The Pharmacy and Therapeutics Committee is responsible for:

1. Overseeing the development of policies and procedures, and standardized procedures related to the procurement, storage, distribution, dispensing, and use of drugs;
2. Developing and maintaining a formulary of drugs for use in Facility; and
3. Reviewing and approving all systems in operation for safe, effective management of legalized drugs.

The Pharmacy and Therapeutics Committee will report to the Medical Audit/Risk Management/Utilization Review Committee quarterly or as required by Facility administration.

Intermittent Management Meetings, as determined by KMC and Facility administration for the purpose of assuring open communication and the discussion of ongoing working issues, requirements for particular aspects of service or processes identified for improvement.

Health care staff will also be encouraged to attend identified Facility staff meetings to include any meetings specifically required by Sheriff for the purpose of Quality Assurance in order to promote a good working relationship among staff.

Daily interaction and communication between Sheriff and KMC shall exist as a means to assist in the resolution of issues and need for adjustments in the provisions of services as they occur.

(4). Policies and Procedures; Title 15, Section 1206

A policy and procedure manual specific for Healthcare Services currently exists with Sheriff. All of these policies will be reviewed, amended, and additional policies developed as mutually agreed upon by KMC and Facility administration. These policies and procedures will be developed and maintained at Facility to identify, at a minimum, policies and procedures which express the will of title 15. Healthcare policies will define both the actual delivery of service and the scope of Facility's responsibility. All policies will be approved by KMC as well as Facility administration.

More specifically, the policy and procedure manual's purpose is to:

1. Define the actual delivery of service and the scope of Facility's responsibility;
2. Provide protection against liability;
3. Identify a common format for the development of all policies and procedures;
4. Provide a mechanism to ensure regular periodic review, revision, cancellation, and creation of new policies and procedures;
5. Define the approval process, prior to implementation, of any new policies and procedures; and

6. Provide a standardized, comprehensive healthcare delivery process based on proven standards of practice.

OUTCOME MEASURES

The policies and procedures manual will be reviewed annually to ensure its related processes and programs continue to reflect proven practice and meet the needs of Facility. Changes made to individual polices will be dated and initialed by the parties. Education regarding policy and procedure development and revisions will be provided to medical staff and correctional staff in documented meetings.

A dated declaration page at the front of the manual will state all revisions or changes to the manual that have occurred since the last review. It will contain approval signatures of those designated by Sheriff and designated members of the healthcare staff.

Manual distribution will include:

1. Sheriff:
 - a. Chief Deputy of Detention
 - b. Detention Compliance Sergeant or Lieutenant – to be distributed as appropriate
2. KMC:
 - a. Vice President, Ambulatory Services
 - b. Clinical Manager
 - c. Responsible Physician
 - b. Clinical Coordinator
 - c. Medical units
 - d. Others as designated

In addition, Facility administration will continue to be invited to participate in the development and approval of both Administrative and Patient Care policies and procedures at KMC which pertain to the care of Facility population. Historically, mutual work has been completed on policies related to restraints, holds, psychiatric services, collection of forensic evidence, and emergency room services. KMC will educate correctional medicine staff on End of Life policies available within the healthcare system. All appropriate options of care will be discussed and made available to patients within the correctional medicine setting. Other issues that pertain to inpatient services for Facility population may be introduced by any member of KMC or Facility staff for future development.

(5). Quality Management; Title 15, Section 1202

KMC shall uphold quality management consistently to ensure:

1. The best possible clinical outcomes for patients.

2. Satisfaction for all of our customers, including staff.
3. Recruitment and retention of qualified staff.
4. Sound financial performance.

KMC's quality management strategy is a coordinated, comprehensive, and ongoing effort to assess the effectiveness of care and services provided. KMC realizes that true quality is a complex, dynamic relationship between KMC, Facility, the inmates, employees and the processes. The goal and purpose will be to:

1. Strive to achieve optimal outcomes;
2. Seek continuous improvements that are consistently representative of a high standard of practice; and.
3. Provide safe and cost effective care, minimizing risks to the patient and Facility.

In order to achieve these quality goals, a quality management program will be implemented by KMC with the assistance of KMC's Director of Quality. The program will be under the supervision of the medical director/responsible physician. At a minimum, the following elements will be included in the program:

1. Systematic identification of important problems, service inconsistencies or concerns for purposes of risk management, improvement of quality care, and application of utilization review;
2. Evaluation of the frequency, severity and source of suspected problems and concerns;
3. On-site monitoring of health services on a regular basis through chart review by the responsible physician, including investigation of complaints, quality of health records, review of prescribing and administration of medication practices and implementation of treatment plans;
4. Upon request of Sheriff, KMC will provide secondary review of all deaths in custody, suicides or suicide attempts, and outbreaks of illness;
5. Implementation of measures to address and resolve those important problems and concerns identified;
6. Re-evaluation of problems or concerns to determine objectively whether the corrective measures have achieved and have sustained the desired results;
7. Findings for quality management activities shall be reported by KMC to Sheriff on a quarterly basis;

8. Incorporation of findings from the Quality Management Program into educational activities;
9. Maintenance of appropriate records of quality management activities;
10. Provision for confidentiality of quality management activities; and
11. Significant events and trends identified per individual practitioner/staff member will be used in the credentialing process and/or evaluation performance report. This information will also be used to develop plans of corrections as required.

The Quality Management Plan shall be designed to measure quality, which is comprised of meeting standards, specifications and customer expectations. The following dimensions of performance are used to evaluate activities:

1. Efficacy: degree to which the care of the patient has been shown to accomplish the desired or projected outcome;
2. Appropriateness: degree to which the care provided is relevant to patient's clinical needs given the current state of knowledge;
3. Availability: degree to which the care is provided to the patient at the most beneficial or necessary time;
4. Effectiveness: degree to the care is provided in the correct manner, given the current state of knowledge to achieve the desired or projected outcome for the patient;
5. Continuity: degree to which the care for the patient is coordinated among the practitioners, among organizations, and over time;
6. Safety: degree to which the risk of an intervention and risk in the care environment are reduced and minimized for the patient and others, including the healthcare provider;
7. Efficiency: relationship between the outcomes (results of care) and the resources used to deliver the patient care; and
8. Respect and caring: degree to which the patient or designee is involved in his/her own care decisions and to which those providing services do so with sensitivity and respect for the patient's needs, expectations, and individual differences.

Methods and tools for evaluation include, but are not limited to data summaries, activity reports, critical events, observation, interviews, questionnaires, complaints, adverse outcomes and Sentinel Event/Root Cause Analysis.

OUTCOME MEASURES

Quarterly, or more often as requested by Facility management, KMC will be responsible for the analysis and effectiveness of the quality management and performance activities. This evaluation will be submitted to Sheriff and will include, but not be limited to, the following:

1. Impact on the quality of patient care and services by comparison of current and previous strategies and quality goals;
2. Performance related to mutually agreed upon organizational objectives and strategic quality initiatives;
3. Leadership participation;
4. Evidence of improved clinical performance and customer satisfaction;
5. Credentialing, privileging and appointing/reappointment process of medical/professional staff;
6. Performance appraisal process of staff;
7. Infection control;
8. Risk management;
9. Utilization management;
10. Staffing patterns and plans;
11. Budget/financial support;
12. Staff education and communication;
13. Safety; and
14. Performance of contract agencies.

(6). External Peer Review

The purpose of peer review is to assess the appropriateness of decision-making, clinical skills, and the overall quality of care. The process encompasses activities such as a review of the appropriate utilization of diagnostic services, all deaths, significant complications, and other unexpected clinical events, as well as cases that have been referred from the Quality Management Program. The outcome is the identification of both strengths and weaknesses, enhanced competence, and the ability to address areas in need of improvement either directly or through the Quality Management Program. Follow up is completed to confirm that appropriate corrective action has been taken.

Written policies and procedures will define: 1) the external peer review program for Facility; and 2) the procedure for reporting appropriate statistical reports of any outside peer review process to Facility administration and County. Peer review of all clinicians, to include mid-levels, is conducted by other practitioners within their discipline in the following ways:

1. Sentinel Event/Root Cause Analysis (both inpatient and on-site);
2. Death reviews;
3. Credentialing and re-credentialing processes;
4. Referral of cases to KMC's second level peer review committee;
5. Annual on-site review of a significant number of medical records by a physician or mid-level practitioner who does not provide routine services to Facility population; and
6. Random or planned review by outside accrediting agencies such as Board of State and Community Corrections, Public Health Department.

(7). Support Services; Title 15, Section 1200

Staff, equipment, supplies, materials and publications shall be available for healthcare provided in Facility. Through discussion with Facility management and mutual review of regulatory standards, goals will be developed for space, configuration of rooms and custody staff requirements to provide the agreed upon services, as well as meeting requirements for privacy and confidentiality.

OUTCOME MEASURES

1. Sufficient office space and treatment rooms are available to provide the medical and dental services agreed upon and to permit privacy during patient encounters;
2. Medication, medical, and emergency supplies and equipment are available;
3. Ancillary services are available in a timely manner; and
4. Dental equipment for on-site examinations and procedures is available for inmates.

(8). Medical Transportation; Title 15, Section 1208

In order to access essential health services that are only available outside of Facility, KMC, in conjunction with Facility administration, will determine the type of transportation, which will be utilized to access these services. Emergency transportation for inmates with critical conditions will be provided by the provider designated by the Kern County Emergency Medical System (EMS) at the cost of KMC. All other non-emergency medical transportation will be coordinated with Sheriff to assure timely access to healthcare services outside Facility. The transmittal of

necessary medical information to provide continuity of service with the outside healthcare provider will be done in a confidential manner.

In an effort to decrease the number of inmate transports to outside facilities, including KMC, KMC in cooperation with Sheriff, will develop a collaborative plan to utilize mid-level practitioners and telemedicine, whenever possible, to expand scheduling for on-site clinics. This will include frequently utilized services such as female services, orthopedic follow-up care, surgery follow-up care, routine monitoring of chronic illnesses and routine dental care. For off-site appointments at KMC, a plan will be developed to allow for more convenient scheduling to minimize the number of trips made to KMC.

OUTCOME MEASURES

Medical transports will be periodically evaluated for the following:

1. Timeliness;
2. Appropriateness;
3. Transportation Modality; and
4. Volume.

(9). Special Needs; Title 15, Section 1207

Healthcare services planning at Facility will include a proactive program for special needs patients, to include those with chronic diseases or conditions requiring close medical supervision or multidisciplinary care. Examples of special needs patients and their conditions are provided below:

1. Chronic diseases such as AIDS, diabetes, hypertension, asthma and epilepsy;
2. Developmentally disabled;
3. Dialysis;
4. Frail or elderly;
5. Physical disabilities;
6. Pregnant;
7. Serious communicable diseases; and
8. Terminally ill.

Policies and procedures consistent with applicable laws will be established for multi-disciplinary sharing of information, in order to ensure all medical needs are met. Policy will require that consultation occurs between the Facility administration and the responsible physician or their designees prior to decision-making regarding housing assignments, program assignments, disciplinary measures, and admissions to and transfers within the system or to another jurisdiction. These policies will ensure that communication remains ongoing between Facility administration and healthcare providers for the development of healthcare treatment plans for all special needs patient.

Medical information shall be shared with custody staff in accordance with regulations for purposes of programming, disciplinary issues, treatment planning and implementation. The nature and extent of information shared shall be appropriate to treatment planning, program needs, protection of others, management of Facility, maintenance of security, and preservation of safety and order.

As the medical role is valuable in the classification system, healthcare staff will be available to participate in classification meetings.

OUTCOME MEASURES

The following outcome measures will be reviewed as a part of the utilization review plan:

1. The presence of a treatment plan, which includes:
 - a. The frequency of follow-up for medical evaluation and adjustment of treatments;
 - b. The type and frequency of diagnostic testing and therapeutic regimens; and
 - c. If appropriate, instructions about diet, exercise, adaptation to correctional environment, and medication.
2. KMC will maintain a list of special needs patients and provide to Facility staff for appropriate treatment plan implementation.

(10). Transport of Inmates with Acute Illness; Title 15, Section 1208

Current policies and defined procedures are in place to ensure continued care for inmates who have serious illnesses or acute conditions requiring healthcare outside of Facility resources. The responsible physician defines these medical illnesses/conditions.

The policies and defined procedures include standard operating procedures, which describe how staff identify, and respond to serious health conditions which warrant transfer from Facility and the urgency of need in order to determine the time of transfer. The mechanism for carrying out the transfer meets the medical and security needs as per current law and will be mutually agreed upon by KMC and Facility administration.

OUTCOME MEASURES

Acute transfers will be evaluated as follows:

1. Appropriateness of transfer;
2. Availability of facility for required treatment;
3. Type of transport; and
4. Outcome.

(11). First Aid Kits; Title 15, Section 1220

Policies and defined procedures are established to include the appropriate response to emergencies requiring first aid.

First aid kits are available in Facility designated areas as determined by KMC and Facility administration. The responsible physician will determine the contents, number, location and procedure for periodic inspection of the kits.

The contents will, at a minimum, include the following:

1. Large enough to contain sufficient contents appropriate to afford first aid treatment in the area of placement;
2. Contents arranged so desired materials can be found quickly without unpacking the entire contents of the box;
3. Material wrapped so those unused portions do not become dirty through handling; and
4. Inventory list present in each kit to ensure monitoring of contents and ordering of material when appropriate.

Documented training will be provided for custody and healthcare staff regarding appropriate response to emergencies requiring first aid. All healthcare licensed staff will possess and maintain first aid certification.

OUTCOME MEASURES

1. Above criteria for first aid kits will be reviewed monthly and documented.
2. All licensed healthcare personnel have current first aid certifications as outlined in competency requirements.

(12). Access to Diagnostic Services

KMC will provide diagnostic studies and services required to support the level of care provided to inmates in Facility according to written policies and defined procedures outlining the access to laboratory and diagnostic services. The KMC laboratory is Clinical Laboratory Improvement Amendments (CLIA) certified and the radiological services meet all applicable regulatory standards. Both programs are fully accredited by The Joint Commission.

The healthcare teams at Facility will continue to provide as many diagnostic and laboratory services on-site at Facility as possible, in order to reduce the transport of inmates to other facilities. KMC will provide additional comprehensive healthcare diagnostic services 24 hours a day, seven days a week, utilizing its own laboratory, radiology, and other diagnostic services and qualified personnel to provide state-of-the-art testing and treatment.

OUTCOME MEASURES

1. All laboratory/diagnostic services are fully accredited at all times.
2. Services are available in a timely manner.
3. Volume of patients transported for diagnostic services is audited by KMC and submitted to Sheriff as part of the quarterly report on quality management and performance activities.

(13). Medical Review of In-Custody Deaths; Title 15, Section 1218

A comprehensive medical and operational review is conducted for all in-custody deaths according to policies developed by the Office of County Counsel, incorporated herein by this reference.

The medical review is a thorough assessment of the conditions surrounding the death. Autopsy reports and all other medical reports are included in the review. All circumstances surrounding the death are evaluated from a medical perspective. All other investigations, including custody and coroner's findings, are also taken into consideration. The review identifies possible areas where further integration of custody and medical policies can be improved, in order to prevent or decrease the possibility of contributing to future deaths.

The medical review team will consist of Facility administration, health administrator, the responsible physician and a nursing representative. Others may be invited depending on the particular case under review.

OUTCOME MEASURES

1. All in-custody deaths are reviewed in a timely manner.
2. The review team consists of appropriate membership to include case specific requirements.

3. Plans for improvements as a result of the death reviews are implemented.

(14). Disaster Plan; Title 15, Sections 1029 and 1032

A Disaster Plan will be developed by KMC and Facility administration and will be a part of the overall plan of Sheriff's disaster plan for Facility. KMC will be available at all times to assist in making certain that the Disaster Plan takes the following health aspects into consideration:

1. Evacuation route and means of transport for injured, ill, disabled, or restrained individuals out of Facility;
2. Triaging plan;
3. Outline of where care will be provided, including alternative sites;
4. Location of community resources; and
5. Inclusion of medical staff in any Facility emergency procedure drills.

The Disaster Plan policies for health aspects will be incorporated into the correctional system through employee hire and educational refresher training.

OUTCOME MEASURES

1. Disaster plan for Facility includes healthcare aspects.
2. Education of all healthcare staff complete.
3. Required drills complete.
4. Action plans developed subsequent to drills complete.

(15). Third-Party Billing

Third party billing will be completed by KMC through its Accounts Receivable Department. KMC will collaborate with Sheriff to develop a process at time of booking to determine eligibility of the inmate for billing through private insurance or other sources. KMC will work to complete third party billing processes for inmates who may be eligible through federal or state government resources, including Medicare and Medi-Cal.

KMC is aware of the following legislative guidelines addressing the cost of services that would fall outside the scope of the Agreement:

1. Medi-Cal will reimburse community healthcare providers for emergency services, outpatient care and inpatient treatment for Medi-Cal covered and/or eligible inmates after they are "released from custody" (specifically defined in statute);

2. Medi-Cal does not pay city and county jurisdictions for needed healthcare services provided by staff in Facility; and
3. Any inmate may decline healthcare or treatment and seek other care and treatment to be provided at their own expense (Penal Code section 4011).

(16). Medical Audits

Monthly Medical Audit/Risk Management/Utilization Committee meetings will be held under the leadership of KMC. Attendees from Sheriff will be determined by Facility administration. Other attendees will include the responsible physician, risk and utilization designees, and nursing representatives and others as required. The purpose of the meetings will be to review all utilization and risk management data as set forth in sections (17) and (18) immediately following, as well as infection control findings.

In addition, these committee meetings will be utilized to address any access to treatment issues such as:

1. Provision of written information to inmates upon their arrival at Facility to make certain that everyone understands how to obtain healthcare; or
2. Identification and elimination of barriers which may prevent inmates from having access to healthcare to meet their serious health needs, as established by the United States Supreme Court in *Estelle v. Gamble* (1976).

Data from the audits will be used by KMC to monitor levels of performance, benchmark within the immediate organization, and support recommendations to the Healthcare Services Committee for changes that enhance the services provided by KMC. The members of the committee shall evaluate the data in order to assess their satisfaction with the services being performed by KMC, as well as in discussing changes that may be desirable to them.

(17). Risk Management Program

KMC will have an ongoing, customized, comprehensive risk management program covering all healthcare services provided to Sheriff. The Risk Management program will be under the direction of KMC, assisted by a designated individual. KMC has a support team available consisting of an experienced Clinical Risk Manager who reports directly to a member of the administrative staff. The overall Facility-specific program designed to meet the needs and challenges of Facility will include the following major elements:

1. Incident Reporting;
2. Litigation and Claims Management;
3. Workers' Compensation and workplace safety;

4. Physician credentialing;
5. Licensing of other healthcare providers; and
6. Insurance coverage.

In addition, the risk management program will include analysis of the following:

1. Policies and procedures;
2. Peer review data;
3. Competency program for healthcare providers;
4. Unexpected outcomes of patient care;
5. Death of incarcerated or hospitalized inmates;
6. All transfers to a higher level of care;
7. Readmissions to hospital within 30 days of inpatient admission;
8. Response to on-site emergencies;
9. Adverse events such as medication errors, omission of treatment, inappropriate triage;
10. Privacy and confidentiality;
11. Others as determined by KMC or Facility administration; and
12. Return to Emergency Department within 72 hours of discharge from Emergency Department and notification to Facility manager.

In-service education programs will be presented by KMC to all healthcare staff, and Facility staff desired, through the cooperative efforts of the risk management and county counsel staff on a quarterly basis. The programs will be structured to provide staff with “practical” applications of legal standards of care and risk management techniques relevant to their daily practice, such as appropriate documentation, patient education, communication techniques, follow-up care, confidentiality, safety, etc. Open lines of communication and networking among all members of the healthcare team and between the healthcare team and Facility staff will be encouraged as a part of the Risk Management Program.

Risk Management audit information will be presented to the monthly Medical Audit/Risk Management/Utilization Committee meeting for analysis and recommendations. The Committee will determine the information that will be presented to the Quarterly Healthcare Services Committee.

(18). Utilization Management Program

KMC will follow the industry standard in the development of a Utilization Management Program. The following basic managed care principles will be utilized:

1. Control access to healthcare services;
2. Proactively manage patient care;
3. Minimize resource consumption; and
4. Provide safe, cost effective, quality healthcare services.

The Utilization Management Program will be under the direction of KMC assisted by a designated individual. The Utilization Management Program will be supported by the Utilization Review manager at KMC, who reports directly to a member of the administrative staff. The Medical Audit/Risk Management/Utilization Committee will be responsible for the development, execution and ongoing maintenance of the utilization plan. The plan will meet all of the elements set forth by The Joint Commission. Specific aspects which will be included in the plan are as follows:

1. Development of criteria to review medical necessity for high cost services or frequently used services;
2. Determination of method to be used in selecting and conducting medical care evaluations;
3. Determination of processes and outcomes that will be measured;
4. Review and evaluation of information obtained by audits performed, with recommendations for changes in procedures and medical staff practices directed at improving quality of care and utilization outcomes;
5. Review of physician practice patterns with follow-up referral, as necessary, to Medical Director or peer review;
6. Review of charges for inpatient hospital stays and other off-site services;
7. Review of referrals for off-site services;
8. Determination of need for additional on-site services at least annually;
9. Determination of necessary education to enhance understanding and practice of appropriate utilization; and

10. Routine audits of specific services performed to include, but not be limited to, the following:
 - a. Total numbers of acute sick call visits, health appraisals, screening examinations, dental visits, hospitalizations, emergency room visits, prescribed medications, and off-site clinic services;
 - b. Total numbers of health visits, screenings, emergency room visits, hospitalizations and prescribed medications, by caregiver;
 - c. Timeliness of completion of medical screening process for all inmates and food service workers;
 - d. Numbers of ancillary services utilized, i.e., laboratory tests performed and radiological services at KMC and other off-site facilities;
 - e. Utilization of medical housing;
 - f. Utilization of medical transportation services;
 - g. Pharmaceutical use for Facility;
 - h. Supply use for Facility; and
 - i. Infection control data.

Utilization audit information will be presented to the monthly Medical Audit/Risk Management/Utilization Committee meeting for analysis and recommendations. The Committee will determine the information, which will be presented to the Quarterly Health care Services Committee.

(19). Cost Containment

KMC will conduct business using proven practice principles and continually strive to increase efficiency and utilization of resources to include personnel, equipment and facilities while maintaining compliance with title 15.

The trained and experienced staff of KMC will support the implementation of the following major components of our cost containment program:

1. Ongoing assessment of on-site capabilities and requirements;
2. Utilization Management Program;
3. Risk Management Program;
4. Review of all off-site services;

5. Pharmacology utilization for both medical and mental health care; and
6. Quality Improvement.

Diligent implementation and adherence to these programs will exceed current industry standards for appropriate utilization of resources and cost-efficient healthcare.

(20). Management Information Reporting

KMC currently uses multiple methods to gather and analyze financial, operational, risk management, utilization, and quality information in the preparation of reports currently provided to Sheriff.

Data collection is initiated at registration with any patient encounter regardless of location, i.e., outpatient clinics, pharmacy, emergency department, inpatient units or ancillary department such as radiology or laboratory. Based on data collected during these encounters, the KMC Health Information System (HIS) has the capability of tracking costs and utilization information by department, payer class, procedure or practitioner. Data may then be formatted for various utilization reports and used for analysis of operations and decision support. This system will be used to provide Sheriff monthly, quarterly and annual statistical requirements of Facility programs and, as desired, by Facility administration.

The current HIS does not apply to pharmacy, dental, sick call and clinics. This information is collected in many forms to include handwritten and computerized entry, and is accumulated on an ongoing basis.

It is the desire of KMC to work with Facility administration to expand the capability of the on-site information systems for the healthcare providers. This will be done within the guidelines developed by Facility as well as meeting Department of Justice standards.

KMC has established a Help Desk to support users of the HIS provided. Training is provided by the superuser(s) identified to help support the system. Software packages currently in use include the following: McKesson STAR Hospital Information system, McKesson TrendStar Decision Support system, SoftMed transcription system, Clarvia staffing system, and MIDAS QM system.

The issue of secure connectivity to all areas of Facility has been addressed and will be continually monitored into the future to prevent security breaches. Issues that arise will be communicated by KMC to Facility administration for remediation.

For patients admitted through KMC's Emergency Department, KMC has access to the mental health Cerner system. The patient's history is available for the purpose of care and discharge planning.

(21). Transition Plan

KMC will maintain current level of services until such time as the contract negotiations are complete. Current employees will be maintained at Facility and Sheriff is assured continuity of services, without any disruptions. Transitional planning will include the determination of timelines for the following:

1. Appointment of a new health authority;
2. Hiring of mid-level practitioners to provide additional medical services;
3. Development of job description and hiring of medical assistants to assist with adult medical services;
4. Determination of membership of quarterly Healthcare Committee, monthly Medical Audit/Risk Management/Utilization Committee, and Pharmacy and Therapeutics Committee; and
5. Personnel staffing, hours of service, additional positions, recruitment and training.

During the transitional period, KMC staff and the existing medical staff at Facility will work to reach amicable, mutually beneficial solutions to any issues or concerns. KMC will work with Facility administration to provide the high level of accredited, cost-effective services they are seeking. All parties involved are charged with developing creative, innovative and aggressive improvements.

2. Personnel and Staffing

(A). PERSONNEL; TITLE 15

Staffing plans shall be provided for Facility and include all services and all classifications of personnel. All personnel will be licensed and competent to perform the required services. There will be a sufficient number available to provide adequate and timely evaluation and treatment consistent with the standards of care and compliance set forth herein. KMC acknowledges that County will require background checks and will maintain the right to veto the use of any on-site employee or contractor. KMC will be responsible for maintaining contracted level of staff for the effective duration of the Agreement.

(1). Licensure; Title 15, Section 1203

Verification of current state licensure certification, registration requirements, Drug Enforcement Agency (DEA) registration numbers and restrictions that apply to qualified health care personnel will be performed by and maintained at the KMC Human Resources Department and Medical Director's Office. State and/or local licensure and/or certification requirements and restrictions, including those defining the recognized scope of practice specific to the profession, apply to

health care personnel working in Facility the same as to those working in the community. Copies of licensing and/or certification credentials shall be on file in Facility or at a central location where they are available for review.

All healthcare personnel shall function within their scope of practice.

(2). Job Descriptions; Title 15, Section 1203

Written job descriptions define specific duties and responsibilities of personnel who provide healthcare in Facility. These job descriptions are prepared by the KMC Human Resources Department in consultation with Facility administration.

All job descriptions will be consistent with scope of practice outlined in Business and Professions Code, Nursing Practice Act, and any other appropriate licensing authorities (e.g., Pharmacy Board, Medical Board, etc.) and will be reviewed annually and approved by KMC.

(3). Staff Development and Training; Title 15, Section 1204

KMC recognizes that employees must have access to appropriate educational programs on an ongoing basis. Such programs are designed to provide information specific to the employee's job duties. The content, number and level of required programs will vary depending upon both the employee's classification and work assignment. A staff development and training program will be developed and implemented for employees to meet identified needs. Educational needs are identified through a variety of mechanisms including, but not limited to:

1. A survey of educational needs involving both managers and staff level employees;
2. Orientation and training appropriate for each position. Both healthcare and custody will be involved with the orientation process;
3. Systematic review of issues identified through the quality management program, safety, infection control or other programs involving the dental and medical healthcare;
4. Requests from healthcare staff for specific programs. These requests may be the results of review activities by peers, performance appraisals of individuals or through other identified channels;
5. Introduction of new procedures, processes or changed technology and products; and
6. Required competencies such as Basic Life Support and First Aid.

All full-time healthcare personnel shall be provided a minimum of 16 hours of continuing education annually. All qualified healthcare personnel who have patient contact will be current in basic cardiopulmonary resuscitation (CPR). Licensed nursing staff will be trained in First Aid.

Continuing education will be documented for all healthcare personnel by the KMC Staff Development Department through a list of completed courses, their dates, and the number of hours per course.

The effectiveness of educational programs will be evaluated to determine if changes occurred as a result of the program. Various methods of evaluation may be used including, but not limited to, pre-and post-tests, and surveys of participants and their managers at defined intervals following completion of the program. Other methods of evaluation include management activities, medical record review and staff interviews.

KMC has developed a mandatory comprehensive orientation program for all new employees. The duration of the program varies depending upon the classification for which the employee is hired. All levels of new health care staff will receive the information necessary to enable him/her to function effectively and proficiently in his/her job. Orientation will address the performance of their healthcare delivery role in an incarceration environment.

(4). Basic Training for Correctional Personnel; Title 15, Section 1204

KMC, in collaboration with Facility administration, will develop a training program to assist in training of Facility personnel regarding:

1. Signs and symptoms of an emergency, including but not limited to, recognizing the need for emergency response in life threatening situations, recognizing the acute manifestation of certain chronic illness (e.g., seizures, intoxication and withdrawal and adverse reaction to medication), and the importance of timely response to potentially serious medical problems;
2. Procedure for action required for potential emergency situations;
3. Signs and symptoms of pregnancy;
4. Procedures for transferring patients to appropriate medical facilities or healthcare providers;
5. Signs and symptoms of mental illness, retardation, emotional disturbance, and chemical dependency;
6. Signs and symptoms of communicable diseases; methods of transmission and methods of exposure prevention, including implementation of standard precautions;
7. Suicide prevention programs;
8. Other programs as requested by correctional personnel, Facility administration, or recommended by KMC and agreed to by Facility administration; and

9. Any correctional employee who participates in the booking process will receive additional training and education related to medical screening.

Facility has elected to use Automatic External Defibrillators (AED). Medical and Facility staff who are responsible for the initiation of this treatment will receive appropriate training.

(5). Medication Administration Training; Title 15, Section 1216

Qualified healthcare personnel will administer and deliver prescription drugs to inmates in Facility. KMC will verify that all personnel who administer or deliver prescription medication receive appropriate training and exhibit required competencies according to guidelines established by nursing, pharmacy and medical staff of KMC. Documentation of medication administration training for healthcare personnel will be maintained by the KMC Staff Development Department.

Appropriately trained healthcare personnel will ensure:

1. That prescription medications are properly administered, accounted for and delivered;
2. That all safety and security aspects of medication administration are followed.

These requirements assist in the elimination of medication errors by ensuring: ***the right drug is administered/delivered at the right time in the right dose by the right method to the right person and do the right documentation.*** Healthcare personnel and correctional personnel will cooperatively confirm ingestion of medication.

The current self-administered medication program at Facility will continue. The approved Policy and Procedure allows inmates to self-administer prescribed medications under limited circumstances. Policies and procedures include, but are not limited to, the following considerations:

1. Medications permitted for self-administration are limited to those with no recognized abuse potential. Medications for treatment of tuberculosis, psychotropic medications, controlled substances, injectables, and any medications for which documentation is essential are excluded from self-administration;
2. Inmates with histories of frequent rule violations of any type, or who are found to be in violation of rules regarding self-administration, are excluded from participation in the self-administered medication program. Ineligible inmates include, but are not limited to: inmates on anti-psychotic medications exhibiting unstable behavior or having a history of debilitating mental health problems; inmates with neurocognitive disorders; inmates with a physical handicap making storage and administration difficult; and inmates who are unable to understand procedures or uncertainty that the inmate will follow the directions of health providers;

3. Prescribing healthcare staff document that each inmate participating in self-administration is capable of understanding and following the rules of the program and instructions for medication use;
4. Provisions are made for the secure storage of the prescribed medication when it is not on the inmate's person;
5. Provisions are made for the consistent enforcement of self-medication rules by both Facility and healthcare personnel, with systems of communication among them when either one finds that an inmate is in violation of rules regarding self-administration; and
6. Provisions are made for healthcare personnel to perform documented assessments of inmate compliance with self-administration medication regimens. Compliance evaluations are done with sufficient frequency to guard against hoarding medication and deterioration of the inmate's health.

(6). Inmate Workers

Policies will require that inmates will be prohibited from being used as healthcare workers. Inmates will not be used to perform the following health services:

1. Performing direct patient care services;
2. Scheduling healthcare appointments;
3. Determining access of other inmates' healthcare services;
4. Handling or having access to surgical instruments, syringes, needles, medications, or health records;
5. Medical/mental health record keeping;
6. Administration of drugs;
7. Distributing or collecting sick-call slips;
8. Operating equipment for which they are not trained; inmates will not be involved in procurement, delivery, administration, inventorying of medical supplies or pharmaceuticals; and
9. Translating confidential medical information.

Inmates must be supervised by custodial staff at all times when providing janitorial services in the healthcare areas, as well as being provided with the appropriate protective garments and education when required to clean patient areas.

(7). Food Service Workers; Title 15, Section 1230

All inmates will be medically cleared by the healthcare staff prior to working in Facility's kitchen or as food servers. Procedures required for clearance will be defined by the responsible physician. The medical clearance for food handlers is subject to the same laws and/or regulations as food service workers in Kern County, California, and will require the following, as a minimum:

1. The absence of exposure to and symptoms of food borne contagious diseases, especially hepatitis and diarrheal disease by history;
2. A physical examination to exclude infected skin lesions, tenderness of the liver and jaundice;
3. A referral process for follow-up care of inmates with a positive finding on the food handler screening;
4. Clearance for food service for inmates with negative findings prior to starting their assignment with periodic reassessment; and
5. Inmates with other health related considerations, e.g., physical limitations, medications, or conditions that cause drowsiness, disorientations, etc. will be precluded from assignments as food service workers.

(8). Credentialing and Privileging

Credentialing of all physicians performing clinical responsibilities on behalf of KMC will include:

1. Verification (through primary source or equivalent) of education and professional training;
2. Verification of current California license, including determination if there are any formal disciplinary actions or restrictions that can be determined through the California Medical Board or appropriate licensing agencies;
3. Verification of Drug Enforcement Administration (DEA) registration, as applicable;
4. Verification of Board Certification, as applicable;
5. Verification of Educational Commission for Foreign Medical Graduates (ECFMG), as applicable;
6. Verification of National Practitioner Data Bank (NPDB);
7. Verification from the Federation of State Medical Boards (FSMB);

8. Verification from the Office of the Inspector General (OIG);
9. Verification from the Excluded Parties Listing System (EPLS);
10. Verification of any special training and experience required for specific clinical Services; and
11. Three peer references, and evidence of membership on another outside accredited facility's organized medical staff.

Privileging of all physicians performing clinical responsibilities on behalf of KMC includes the following:

1. A list of core privileges that the physician is approved to perform in Facility. This list is based on a determination of training, competence, and ongoing education and experience;
2. A review and renewal process conducted on a regular basis, at minimum every two years, to assure ongoing competency. This should include consideration of information from quality management and peer review activities;
3. Specific privileging is a clinical activity and verification of credentials may be completed by administrative personnel;
4. Privileging is required for all practitioners who are providing diagnostic and treatment services; and
5. Access to credentials/privilege files is restricted to defined personnel.

In the case of mid-level practitioners, approval for practice is accomplished in the following manner:

1. All KMC employed mid-levels complete the routine employee application and approval process through the KMC Human Resources Department;
2. KMC Human Resources Department verifies all licensure information as well as a criminal background check;
3. The application is reviewed and approved by the Interdisciplinary Practice Committee (IPC) of KMC for verification of education and licensing;
4. Review and approval by the Supervising Physician and individual medical staff departments of the written standardized procedures that are prepared for the Nurse Practitioner and Delegation of Services that are prepared for the Physician's Assistant;

5. The IPC reviews the application to assure the mid-levels have training and experience commensurate with clinical protocols, as well as updated procedures and satisfactory performance records;
6. Physician Assistants applications are referred to the Credentialing Committee for verification of appropriate Supervising Physician;
7. All non-employed mid-levels are credentialed through the medical staff process following IPC review and approval;
8. All applications are referred to Medical Executive Committee for final approval; and
9. Annual evaluations are completed collaboratively between Supervising Physician and Clinical Manager for area of practice.

(9). Recruitment Practices

KMC recruitment efforts are planned, directed and supervised by the Hospital Human Resources Department. All efforts will be made by KMC to assure that adequate staffing levels are maintained at all times in Facility and sustain inmate medical care as prescribed by law.

Recruiting efforts include:

1. Local advertising in newspapers and specialty publications;
2. Job postings at the KMC Human Resources Department; and
3. Local and state job fairs sponsored by nursing associations, colleges of nursing, and professional organizations.

3. Health Services Operations

(A). CARE AND TREATMENT; TITLE 15 CCR 1055, 1058, 1069, 1200 ET SEQ.

(1). Emergency Service; Title 15, Section 1208

Written policies and procedures will be developed in coordination with Facility administration outlining medical and custody staff responsibilities, security procedures, emergency transport, use of designated hospital emergency department, emergency drugs, supplies, and medical equipment (e.g., Automatic External Defibrillators). For this purpose, an emergency is defined as medical or dental healthcare for an acute illness or an unexpected health need that cannot be deferred until the next scheduled sick call or clinic. In addition, a physician will be on-call and available at KMC or by telephone 24 hours a day, seven days a week, as needed by the medical personnel at Facility. A licensed nurse will be on-site at Facility 24 hours a day, seven days a week to evaluate, treat and make referrals to on-call physicians, dentists and psychiatrists or KMC.

KMC will utilize the local Emergency Medical System (EMS) for all emergency medical transports at Facility. EMS has the option to use “nearest emergency room” at their discretion, as well as diverting emergency vehicles to non-contracted hospitals in the event crowding or diversion requirements are in effect.

(2). Receiving Screening; Title 15, Section 1207

It is the intent of Sheriff staff to continue to utilize health trained correctional personnel to do the initial screening according to written policies and a screening tool collaboratively developed and approved by KMC, responsible physician and Facility administration. When trained custody staff conducts the screening, procedures shall require subsequent review by licensed healthcare staff of any positive finding within the next working day or at the next scheduled Registered Nurse shift, whichever comes first. A Registered Nurse will be available for consultation during the screening process in the event consultation is desired by the correctional staff. Any receiving screening (booking slip) with a positive medical response is forwarded immediately to the healthcare staff. Once reviewed, it is included in the inmate’s medical record. A new receiving screening will be completed with each booking.

The screening criteria will be consistent with Facility’s resources to hold the inmate safely. Inmates who are unconscious, semi-conscious, or otherwise obviously in need of immediate medical attention, will be referred immediately upon arrival to KMC for emergency medical evaluation and written medical clearance to Facility. Written documentation of the reasons for requiring a medical clearance and the clearance from the emergency room will be provided.

Procedures for receiving medical screening will consist of a defined, systemic inquiry and observation of every inmate booked into Facility and will include, at a minimum, the following:

1. Screening procedures shall address medical and dental concerns that may pose a hazard to the inmate or others in Facility, as well as health conditions that require treatment while the inmate is in Facility;
2. Any inmate suspected to have a communicable disease that could pose a significant risk to others in Facility shall be separated from the general population pending the outcome of an evaluation by healthcare staff;
3. Procedures will require timely referral for healthcare commensurate with the nature of any problems or complaint identified during the screening process; and
4. All correctional staff who perform medical screenings will receive training regarding the administration of the intake screening questionnaire form.

The health screening form will include, at a minimum, inquiry into:

1. Current illness and health problems, including medical, dental and communicable diseases, to include:
 - a. Cough for three weeks or more;
 - b. Coughing up bloody sputum; and
 - c. Unexpected weight loss, night sweats and fatigue;
2. Medications taken and special health requirements;
3. Use of alcohol and other drugs, including types, methods, amounts, frequency, date, time, and quantity of last use, and a history of problems which may have occurred after ceasing use;
4. History of or appearance of mental illness, including suicidal ideation or behavior;
5. Appearance or history of developmental behavior;
6. Inquiry about physical or sexual abuse;
7. For females, a history of gynecological problems, possibility of current pregnancy, and present use of birth control; and
8. Allergies.

Observation of:

1. Behavior, which includes state of consciousness, mental status, appearance, conduct, tremors and sweating;
2. Body deformities and mobility issues;
3. Condition of skin, including trauma markings, bruises, lesions, jaundice, rashes and infections, needle marks or other indications of drug abuse; and
4. Slowness in speech or lack of comprehension of questions suggesting developmental disabilities.

Disposition, such as:

1. Referrals to KMC on an emergency basis;
2. Referral to an appropriate healthcare service at next sick call;
3. Referral to classification for a housing decision; or
4. Isolation or special observation in Facility.

The adult medical screening form shall be reviewed annually and recommendations for revision made as necessary.

Any inmate who answers one of the screening questions in the affirmative will be evaluated by the registered nurse prior to the arresting officer being released.

(3). Substance Abuse/Intoxicated Inmates; Title 15, Section 1213

Specific policies and standardized procedures will be developed by the responsible physician for the management of intoxicated inmates, with specific provisions for pregnant inmates. Intoxicated pregnant inmates will be medically cleared at KMC prior to being booked into Facility. The standardized procedure for detoxification will include symptoms requiring immediate transfer as well as procedures for transfer to a hospital. Facilities without medically licensed personnel in attendance shall not retain inmates undergoing withdrawal reactions judged or defined in policy, by the responsible physician, as not being readily controllable with available medical treatment. Such facilities shall arrange for immediate transfer to an appropriate medical facility. The following specific issues will be addressed in the policy and procedures:

1. Time within which medical evaluation must be performed;
2. Time frames for checks by trained custody and/or medical staff;
3. Degree of contact with the inmate must be according to level of consciousness and ability to respond to verbal stimuli;
4. Checks are for the purpose of determining that condition has not deteriorated; and
5. Responsible physician and/or designee should determine individual treatment plans or protocols.

Non-pregnant inmates will be detoxified according to standardized procedures when participation in methadone programs cannot be verified. Standardized procedures for detoxification are developed by the responsible physician.

All chemically dependent or intoxicated pregnant inmates will be referred to KMC for evaluation and treatment recommendations.

(4). Access to Treatment; Title 15, Section 1208

KMC will assist Facility administration in the development of written policy and defined procedures to provide unimpeded access to healthcare. The policy will require information regarding healthcare services be communicated orally and in writing to correctional population upon arrival at Facility. Provisions will be made to communicate to non-English speaking inmates how to obtain healthcare. Descriptions of medical care services and methods of obtaining health care will be included in inmate orientation information.

All inmates will be advised of the following:

1. Healthcare options;
2. Procedures for requesting care;
3. Healthcare options within the institution and provision for outside appointments; and
4. Avenues to express concerns about the healthcare system.

(5). Daily Triage of Healthcare Requests; Title 15, Section 1211

KMC, in cooperation with Facility administrator, will develop policy and defined procedures to establish a daily routine for inmates to convey requests for emergency and non-emergency medical/mental health services.

Inmate healthcare requests (sick call slips) will be documented and processed daily as follows:

1. Solicited daily and acted upon by medical or health-trained personnel; and
2. Followed by appropriate triage and treatment by qualified health personnel when indicated.

All healthcare requests will be maintained in the individual inmate's medical records along with notes related to their disposition.

(6). Clinic Care

Written policies and procedures as agreed upon by KMC and Facility administration will require that a physician, mid-level practitioner or registered nurse conduct on-site ambulatory clinic care to meet standards set forth by title 15. KMC's plan for clinic care will be as follows:

There will be nursing staff available for sick call seven days per week at Facility. Physician sick call will be provided at a minimum of five days a week at Facility. A physician will be available on-site or by telephone for consultation at any time a nurse or nurse practitioner/physician assistant is providing care at Facility. Telemedicine and phone consultation will be considered as coverage.

(7). Health and Communicable Disease Screening; Title 15, Sections 1206.5 and 1208.5

The KMC responsible physician, in cooperation with Facility administration, will develop written policy and defined procedures for a health and communicable disease screening of all inmates after arrival at Facility. The inventory/screening process will be used for the following purposes:

1. Identification of illnesses that will require treatment during the period of confinement; and
2. Detection and treatment of communicable diseases that threaten the institution and staff.

OUTCOME MEASURES

1. Health and communicable disease screenings are completed on all inmates within 96 hours of arrival to Facility.
2. Follow-up is determined by results of screenings.
3. For inmates undergoing prolonged incarceration, an age appropriate and risk factor based health maintenance visit shall take place within the inmate's second anniversary of incarceration. The specific components of the health maintenance examinations shall be determined by the responsible physician based on the age, gender, and health of the inmate. Thereafter, the health maintenance examinations shall be repeated at reasonable intervals as determined by the responsible physician.

(8). Direct Orders: Title 15, Section 1204

Treatment not covered by standardized procedures but delivered by health care personnel will be performed pursuant to direct orders written and signed by personnel authorized by law to give orders.

Personnel authorized to give direct orders include physicians, dentists, podiatrists and clinical psychologists. Nurse practitioners and physician assistants may give direct orders under the supervision of a physician.

OUTCOME MEASURES

Facility contains 14 medical beds and 12 suicide watch beds. The infirmary will be utilized to house inmates who require intermittent skilled nursing observations for chronic and convalescent medical, surgical and mental health conditions. The following standards will be maintained within the infirmary unit:

1. There will be a licensed nurse available in Facility 24 hours a day;
2. There will be a designated supervising registered nurse available seven days a week;
3. All patients will be within sight and sound of health trained staff person (CPR and First Aid);
4. A physician is on call 24 hours to provide telephone directions;
5. There is a nursing care procedures manual;

6. Medical records are kept on each inmate patient, including admitting notes and discharge plan. This record shall be a part of the inmate-patient's medical record;
7. Admission care shall be on the order of a physician, mid-level practitioner, or registered nurse;
8. Discharge care shall be on the order of a physician or mid-level practitioner; and
9. Inmates requiring skilled nursing services beyond the capability of the infirmary, due either to nursing or correctional staff limitations, acute medical care, or acute mental health services will be transferred and evaluated for admission to an appropriate licensed inpatient healthcare facility.

The infirmary will have written policies and procedures, which delineate the scope of services that will be allowed in the unit. The policies will be appropriate to support the type and complexity of care provided, designate authority for admission and discharge, frequency of health staff encounters in a 24-hour period, documentation guidelines and the role of custody staff.

(9). Communicable Diseases; Title 15, Section 1206.5

KMC will collaborate with Facility in processes to identify, contain, and treat all communicable diseases. The responsible physician, in collaboration with Facility managers and the local health officer, shall develop comprehensive written policies and procedures, which describe the plan for the detection, control, and treatment of inmates with communicable diseases. This plan will address at a minimum: tuberculosis, hepatitis, HIV infection, ectoparasites, sexually transmitted diseases, and outbreaks of common respiratory and gastrointestinal disorders. Principles of standard precautions will be included in the plan. The communicable disease policies will reflect applicable regulations and statues such as OSHA's "Blood Borne Pathogens," Health and Safety Code section 121070, and title 15, section 1206.5.

The policies will also outline the appropriate notification process to inform Facility manager of inmates with communicable diseases. In addition, the policies and procedures will contain a plan for the detection and containment of communicable diseases using the following techniques:

1. Intake health screening procedures;
2. Identification of relevant symptoms;
3. Referral for medical evaluation;
4. Treatment responsibilities during detention;
5. Coordination with public and private community-based resources for follow-up treatment;

6. Collaborating with Facility administration in making housing decisions;
7. Applicable reporting requirements;
8. Use of standard precautions at all times by all healthcare providers and Facility staff;
9. Determination regarding immunizations for inmates;
10. Strategies for handling disease outbreaks; and
11. Decontamination of medical equipment and proper disposal of sharps and biohazardous wastes.

The policies and procedures shall be updated as necessary to reflect communicable disease priorities identified by the local health officer and currently recommended public health interventions. Communicable diseases that shall be addressed will include tuberculosis, hepatitis, HIV infection, ectoparasites, sexually transmitted diseases and outbreaks of common respiratory and gastrointestinal disorders.

KMC will assist in the development of a training program for custody staff in the implementation and application of standard precautions as they apply to their daily work duties. This education shall be documented.

All Facility inmates at will be screened for tuberculosis and have a tuberculosis skin reading within 72 hours after arrival at Facility. Inmates will be tested according to Center for Disease Control (CDC) guidelines. Medical information regarding tuberculosis status and treatment plans will be submitted to receiving facilities whenever inmates are transferred to outside facilities.

OUTCOME MEASURES

1. Policies and procedures will describe communicable disease plan.
2. All communicable diseases will be tracked.
3. Tuberculosis skin testing of inmates will be completed as stated above.

(10). Mental Health Services; Title 15, Section 1209

Kern Behavioral Health and Recovery Services and Sheriff will have a separate agreement in place to assure that all title 15 mental health requirements are met, including but not limited to screenings for mental health concerns upon intake processing at initial booking at Facility; processes for bridge medications to facilitate identified patients in continuing psychotropic medications; care plans; informed consent; medication reconciliation and support services; and suicide watch/prevention.

Kern Behavioral Health and Recovery Services will establish the working relationships between KMC staff and Kern Behavioral Health and Recovery Services necessary to ensure continuum of care.

All inmates will receive an initial screening for mental health concerns upon their arrival at Facility. Any inmate with a mental health concern will be referred to Kern Behavioral Health and Recovery Services for an in-depth mental health screening. Processes for bridge medications shall be coordinated by KMC and Kern Behavioral Health and Recovery Services to facilitate identified patients in continuing psychotropic medications until they can be seen by a mental health clinician. In addition, KMC will cooperate in any ongoing treatment as prescribed by the mental health providers.

OUTCOME MEASURES

1. Referrals will be made to mental health services based on criteria developed.
2. Medical and mental health staffs will collaborate in the provision of mental health services during stay and at time of discharge.

(11). Suicide Prevention; Title 15, Section 1030

The established suicide prevention program currently identifies, monitors, and provides mental health treatment guidelines for those inmates who present a suicide risk or who are perceived to be a suicide risk. Any inmate who verbalizes suicidality, makes a suicidal gesture or threat, or who is perceived to be suicidal by on-site medical staff or KMC Emergency Department staff will be placed on suicide watch. Suicide watch is the responsibility of Sheriff personnel; however, on-site medical staff are responsible for the assessment and treatment of inmates on suicide watch. Suicide watch at Facility may be conducted in the infirmary. Mental health staff will make specific recommendations about the necessity of suicide watch and the housing of any inmate on suicide watch. Decisions to discontinue suicide watch will be made after consultation with the treating psychiatrist, except in limited situations defined by written policy. The suicide prevention program establishes time frame expectations to complete each contact previously discussed with thorough, specific documentation requirements. The on-site Mental Health Supervisor, under the direction of the Lead Psychiatrist, will continue to assure that suicide prevention program training is provided to medical staff and Facility personnel.

OUTCOME MEASURE

1. All suicides will be investigated and Sentinel Event/Root Cause Analysis completed.

(12). Healthcare Philosophy

KMC is guided by its vision and values in all actions and relationships. KMC will improve the health and well-being of our community through leadership in prevention, treatment, education,

community involvement and access to care. The values KMC follows are compassion for all, actions speak louder than words, respect for all, excellence, and service before self.

All healthcare, including medical interviews, examinations and procedures will be conducted in private, in a manner designed to encourage the inmate's subsequent utilization of health service. Patient rights and privacy requirements will be respected in dealing with the following issues:

1. Informed consents will be obtained prior to performance of procedures, which customarily require such consent;
2. Policy and procedures will require the recognition by both medical and custody staff of properly executed advance directives; and
3. When rectal and pelvic examinations are indicated, verbal consent is obtained from the inmate. Refusal of such examinations shall be clearly documented in the chart.

(13). Reproductive Services; Title 15, Sections 1206

Services will include but not be limited to those prescribed by title 15. KMC has extensive resources and expertise in maternal child programs and makes these available to Facility in the design of the reproductive services program. Comprehensive counseling and assistance is provided, as defined by policy, to pregnant inmates whether desiring abortion, adoption services, or planning to keep the child. Special diets and management of the chemically dependent inmate along with referral of high-risk OB/GYN specialty care is available. KMC and Sheriff will work together to develop an "Emergency Contraception Policy" for female inmates to inform them of their rights at the time of intake. Provision for the medical care of lactating women and monitoring for postpartum depression or other medical complications is also provided.

Counseling and education programs for all inmates desiring assistance or health education regarding contraception, and the prevention of sexually transmitted diseases is available. Family planning as well as continuation of hormonal contraception is provided.

Abortion services will be addressed collaboratively through development of a policy with Sheriff. A program that provides for appropriate counseling, support services, consent and follow-up is provided.

(14). Use of Restraints; Title 15, Sections 1058

Written policy and procedures which have been developed by Facility administration, and representatives from medical and mental health services currently exist to guide the use of restraints for disordered behavior. They address authorization for use, types of restraints, guidelines for application, and monitoring.

Efforts are ongoing in the attempt to use a multidisciplinary approach to decrease the use of restraints and more importantly, use other less restrictive alternatives whenever possible. KMC

will concentrate additional efforts in developing methods for making recommendations for transfer of an inmate to a higher level treatment facility for medical/psychiatric evaluation for situations that do not rapidly resolve as this behavior may be an indication of serious, even life-threatening disease.

KMC and Sheriff have worked collaboratively to develop a Restraint Policy for inpatients at KMC, which involves a cooperative effort in the management and monitoring of restraints. Methods for communicating mutual needs and resolving issues was a major focus of this policy and has provided much needed direction to the staff of both KMC and Facility.

(15). Individual Treatment Plans; Title 15, Sections 1210

Written individualized treatment plans will be developed by a physician or nurse practitioner for inmates requiring close medical supervision, including chronic and convalescent care. The plans will be comprehensive and include participation by KMC and other correctional staffing in the care and supervision of inmates. Specific discussions will be held in order to ensure coordination and cooperation in the ongoing care of inmates. Discharge planning and appropriate referral will be taken into consideration in the treatment plans of those being transferred or who may be released from Facility.

(16). Standardized Procedures/Protocols; Title 15, Section 1204

The practice of nurses and mid-levels (Nurse Practitioners, Registered Nurses and Physician Assistants) employed by KMC, will be governed as follows:

1. All mid-levels hired by KMC will report to and receive evaluations from the supervising physician;
2. Standardized Procedures will be written for Nurse Practitioners according to the California Nursing Practice Act;
3. Only registered nurses and nurse practitioners shall implement the standardized procedures;
4. Physician assistants shall function pursuant to written protocols, a Delegation of Services agreement, and a contractual agreement with the supervising physician as directed by the Medical Board of California;
5. Written policy will require the active participation of the responsible physician in the development of standardized procedures/protocols and Delegation of Services Agreement;
6. Implementation of orders will not be an independent function for mid-levels but will be dependent upon the approval of the physician;

7. All Standardized Procedures, Protocols and Delegation of Services Agreements will be approved by KMC's Interdisciplinary Practice Committee and Medical Executive Committee;
8. Licensed vocational nurses will not independently initiate standardized procedures; and
9. Physical assessments will be performed at a minimum by a registered nurse.

OUTCOME MEASURES

1. All mid-level practitioners will function according to their Scope of Practice.
2. All licensed nurses will function according to their Scope of Practice.

(17). Continuity of Care: Title 15, Section 1206

The Utilization Review designee under the direction of KMC will have the responsibility of implementing proven practice and following policies mandating procedures requiring continuity of care from admission to discharge from Facility, including referral to known community care agencies whenever indicated.

Continuity of Care is initiated on entry into Facility with the health services representatives obtaining as much information as possible regarding the health history of the inmate. This enables the staff to develop realistic treatment plans. Ongoing monitoring of both acute and chronic conditions and response to treatment is necessary to prevent health deterioration and assess response to treatment. This information is used when the care of the inmate is transferred to other correctional facilities or providers in the community, enabling them to be informed in the development of ongoing plans of care.

Formal linkages between Facility and community-based organizations are used to provide the most appropriate referrals to the discharged inmate. Education is provided to the released inmate that emphasizes the importance of appropriate follow-up and aftercare as well as providing lists of specialized community providers whenever possible.

Availability of a two-week medication supply according to the "Wakefield" decision is arranged in order to provide the released inmate an opportunity to connect with community providers.

All health information is shared with providers in accordance with consent and privacy laws.

(18). Inmates in Safety Cell; Title 15, Section 1055

Facility administration and KMC shall work together to develop and implement policies and procedures requiring notification of on-site medical/mental health staff within one hour of placement of an inmate in a safety cell. Medical staff cooperates and participates in the ongoing monitoring of that inmate's progress as defined in the policy. The focus of monitoring is to

detect underlying complicating medical or mental health problems and consider serious infectious disease, head trauma, acute states of delirium and serious mental disorders.

An inmate shall be placed in a safety cell only with the approval of the facility manager or designee, or responsible health care staff; continued retention shall be reviewed a minimum of every four hours. A medical assessment shall be completed within a maximum of 12 hours of placement in the safety cell or at the next daily sick call, whichever is earliest.

The inmate shall be medically cleared for continued retention every 24 hours thereafter. The facility manager, designee or responsible health care staff shall obtain a mental health opinion/consultation with responsible health care staff on placement and retention, which shall be secured within 12 hours of placement. Direct visual observation shall be conducted at least twice every 30 minutes. Such observation shall be documented.

(19). Inmates in Segregation; Title 15, Section 1053

KMC will be responsible for the coordination and development of the policy related to inmates in segregation so appropriate accommodation for health conditions can be addressed. Inmates separated from the general population are at the greatest risk of deterioration. However, any inmate in custody could exhibit behaviors that are indicators of declining mental and physical health. Inmates in segregation will require additional checks by medical staff to afford additional safeguards to the health of the inmate placed in isolation. Monitoring can be accomplished in the course of medication rounds. Observations will be documented.

Upon notification that an inmate is placed in segregation, a qualified healthcare professional reviews the inmate's health record to determine whether existing medical, dental or mental health needs contradict the placement or require accommodation. Special attention is given to vulnerable populations, such as the mentally ill. Care is taken when reviewing health records of inmates with identified mental health illness to assess the risk of exacerbation of the preexisting mental illness. Medical staff reviewing the record will notify mental health staff when the inmate is currently under the care of mental health services. Such review is documented in the health record.

When a segregated inmate requests healthcare, arrangements are made for triage, examination, and treatment in the appropriate clinical setting. The segregation rounds are in addition to mechanisms in place for inmates to request health services daily.

The health professional's monitoring of a segregated inmate is based on the inmate's degree of isolation:

1. Inmates who are segregated and have limited contact with staff or other individuals, are monitored at least three (3) times a week by medical staff;

2. Inmates who are allowed periods of recreation or other routine social contact among themselves while being segregated from the general population, are checked weekly by medical staff;
3. The following is documented in the inmate's medical record:
 - a. The date and time of the contact;
 - b. Evaluation for possible injury and or depression;
 - c. Notation of bruises and other trauma markings and comments regarding the inmate's attitude and outlook; and
 - d. The signature or initials of the health staff member making the rounds.

OUTCOME MEASURE

1. All inmates placed in segregation will have their medical and mental health routinely monitored and maintained while physically and socially isolated from the remainder of the correctional population. Any unexpected outcomes will be documented.

(20). Health Promotion and Disease Prevention; Title 15, Section 1206.5

It is most important to provide health promotion and disease prevention information and in-service training for healthcare and correctional staff as well as inmates. Educators will be provided from the healthcare staff, correctional staff, medical staff or resources available at KMC and within the community.

Inmate health education may include:

1. Personal hygiene and nutrition;
2. Communicable disease prevention (e.g., sexually transmitted disease, HIV, tuberculosis, hepatitis, etc.);
3. Effects of smoking and guidance on smoking cessation;
4. Self-examination for breast, testicular, and skin cancer;
5. Dental hygiene;
6. Drug abuse and danger of self-medication;
7. Family planning, including, as appropriate, both services and referrals;
8. Physical fitness;

9. Chronic diseases and/or disabilities;
10. Stress management;
11. Immunizations; and
12. Individual health education will be given and documented in the medical record at the time medications are prescribed and/or special medical instructions are given.

KMC promotes the continuous updating of knowledge and skills. KMC will provide routine in-service programs for on-site medical staff to continually improve healthcare delivery in the correctional setting. In addition, biannual Nursing Updates are designed to promote the continued development of knowledge, skills and practices that are consistent with contemporary standards for nursing practice. Topics will reflect the particular professional education needs of the staff. Written objectives for each topic will describe the expected learning outcomes so that the appropriate evaluation can take place. Continuing Education Units may be available in some cases. The following is a list of topics that have been used or may be used:

1. Infection Control - Standard Precautions;
2. Physical Assessment;
3. Cardiac Systems;
4. Neurological Systems;
5. Respiratory Systems;
6. Nursing Management; and
7. Diversity and Racial Sensitivity.

KMC also maintains reference books, periodicals, audio/video tapes and computerized learning modules for use by the nursing staff in obtaining continued education units or updating their knowledge base.

Training programs for the custodial staff will be coordinated with Facility administrators. Training will provide staff with practical information that can be used in the performance of their jobs and will be provided at a time convenient to work schedules and in institutional routines. The following topics would be appropriate:

1. Communicable diseases, including AIDS and precautions;
2. Standard precautions;
3. Health screening for receiving staff; and

4. Any staff training programs in subjects as may be requested by Sheriff.

(21). Chemically Dependent Inmates; Title 15, Section 1213

There will be written policy and defined procedures regarding the clinical management of chemically dependent inmates, which requires:

1. Diagnosis of chemical dependency by a physician or properly qualified designee (as authorized by law);
2. A physician or designee decision as to whether an individual needs pharmacological or non-pharmacological supportive care;
3. Development and implementation of an individual treatment plan; and
4. Referral of inmates to specified existing community resources upon release as appropriate.

(22). Hospital Care and Specialty Care; Title 15, Section 1208

Inmates who cannot be adequately treated as “outpatients” will have access to a higher level of medical and mental health care. Acute general hospital services will be available through KMC or the nearest emergency room for those inmates deemed to require such services by qualified health services staff. Referral is made in accordance with the off-site hospital’s resource capabilities, the priority of medical emergency, and Facility procedures.

If transportation requirements are emergent, paramedics will be called, otherwise medical staff will notify custody staff of the need to transport the inmate to the hospital. Custodial staff will transport patients (routine, medically appropriate and non-emergent conditions), KMC will collaborate with Sheriff regarding transportation of inmates to the hospital and outside clinics.

(23). Dental Care; Title 15, Section 1215

Dental care will continue to be provided to each inmates under the direction and supervision of a licensed dentist. Emergency and medically required dental care is provided to each inmate upon request. Dental services are not limited to extraction. It is a goal of dental services to:

1. Alleviate pain and suffering;
2. Ensure that inmates do not lose teeth merely as a consequence of incarceration; and
3. Provide appropriate dental service whenever medically required to maintain nutrition.

Dental services are provided by a contract dentist licensed by the state of California.

The dental clinic will be scheduled two half days a week or more as indicated by the dental appointment waiting list.

(24). Prosthesis/Assistive Device; Title 15, Section 1207

KMC, in cooperation with Facility administrator and the responsible physician will develop policies and procedures regarding the provision, retention and removal of medical and dental prostheses, including eyeglasses and hearing aids. Prostheses will be provided to inmates if the treating physician determines that the health of the inmate would otherwise be adversely affected. The policy for provision of prostheses will consider the community standards for prostheses and the length of the inmate's detention. Policy for removal of devices because of security issues will be written in coordination with Sheriff and will include a physician examining the inmate within 24 hours of having the appliance removed.

(25). 24-Hour Emergency Coverage

Twenty-four hour on-call medical coverage will be provided by the responsible physician or designees. The physicians at the KMC Emergency Department will provide additional 24-hour back-up emergency medical, dental, psychiatric, and mental health services. Facility will be staffed by a licensed nurse 24 hours per day.

(26). Discharge Planning and Post-Release Care

Continuity of care after discharge is a very important and vital aspect of correctional medicine. Names of community clinics and service providers will be furnished as requested.

1. KMC staff shall assist all inmates leaving Facility to obtain continuity of medical and dental health care.
2. Medications and/or prescriptions will be available to the inmate for up to two weeks in compliance with the "Wakefield" decision.
3. Inmates transferred to another jurisdiction shall have a summary of the health record forwarded to the healthcare staff of the receiving facility.
4. The healthcare summary shall include but not be limited to medical problems, tests, treatments, allergies, immunizations, mental health concerns, suicidal ideation and other relevant information. Communicable disease exposure requiring follow-up observation and/or treatment will also be included.
5. Medications will be released to placement and/or correctional facilities upon the inmate being released/transferred as appropriate.

(27). Pharmaceutical

In order to provide pharmaceutical services in a cost-effective manner that satisfies existing rules and regulations outlined in title 15, pharmaceuticals will be provided as follows:

1. Pharmaceuticals will be provided by Facility's dedicated pharmacy;
2. Prescriptions will follow guidelines developed by the P&T Committee; and
3. If the commissary vendor is willing to stock over the counter (OTC) medications, inmates will be encouraged/expected to purchase their OTC medications through the commissary. KMC will provide OTC medications as a last resort to those inmates that are indigent per title 15 (an inmate who has \$1.00 or less in their inmate trust account for 30 consecutive days) and therefore incapable of purchasing the OTC medication through the Commissary.

(28). Health Records

a) Health Records; Title 15, Section 1205

KMC's appointed on-site healthcare authority shall maintain a single, completed, dated, integrated health record for each inmate, which may include:

1. The completed receiving screening form;
2. Health appraisal data forms;
3. Complaints of illness or injury;
4. Progress notes including, all findings, diagnosis, treatments, and dispositions;
5. Prescribed medications and documentation of their administration or refusal by the inmate on medication records in conformance with title 15, section 1438;
6. Laboratory, x-ray, and diagnostic studies;
7. Signature and title of each documenter;
8. Copies of previous health records;
9. Consent and refusal forms;
10. Authorization for release of information forms;
11. Date and time of health encounters;
12. Location of where treatment is provided;

13. Discharge summary of hospitalizations;
14. Health service reports (e.g., emergency department, dental, psychiatric, and other consultations); and
15. Individualized treatment plan when applicable.

Health records will reflect the date and time of encounters. Place of encounter will be documented if it takes place away from the treatment area (e.g., housing area, safety room, etc.). Access to the medical record shall be controlled by the health administrator and shall ensure that all confidentiality laws related to the provider-patient privilege apply to the health record.

KMC's Manager of Health Information Services (Medical Records) credentialed by the American Health Information Management Association, as either a Registered Health Information Management Administrator (RHIA) or Registered Health Information Management Technician (RHIT) will support through consultation services best practices for the management of health records in accordance with title 15 regulations. In addition, the expertise of the Manager of Health Information Services will be consulted on any plans for the transition from paper to electronic health records.

b) Confidentiality of the Healthcare Record; Title 15, Section 1205

KMC, in cooperation with Sheriff, shall develop policy and defined procedures that provide for maintenance of the health record in a secured locked area separate from the confinement record. The provider-patient legal privilege to confidentiality shall apply to the health record. KMC will participate with Sheriff in the development of procedures to assure compliance with various laws relative to confidentiality and release/disclosure of patient records.

c) Transfer of Health Records and Information; Title 15, Section 1205

KMC, in cooperation with Sheriff, has established written policy and procedures to assure that a healthcare summary and relevant records are forwarded to healthcare staff in the receiving facility when an inmate is transferred to another jurisdiction and to the local health officer, if applicable.

Policies include:

1. A summary of the health record, or documentation that no record exists at the facility, sent in an established format, prior to or at the time of transfer, including:
 - a. Suitability for travel based on medical evaluation;
 - b. Medication or other therapy required en route;

- c. Non-confidential instructions in a conspicuous location to transporting personnel in lay terminology regarding medication or other special treatment;
 - d. Specific precautions which should be taken (e.g., mask or gloves); and
 - e. Documentation of medical problems, treatments, and allegations.
2. All relevant health record information is forwarded to the healthcare staff of the receiving facility.
 3. Advance notification will be provided to the local health officer in the sending jurisdiction and responsible physician of the receiving facility prior to the release or transfer of inmates with known or suspected active tuberculosis disease.
 4. Written authorization from the inmate is obtained prior to transferring copies of actual health records, unless otherwise provided by law or administrative regulations having the force and effect of law.
 5. Confidentiality of health records is maintained.

After inmates are released to the community, health record information is transmitted to specific physicians or healthcare facilities in the community, upon request and with the written authorization of the inmate.

d) Records Retention; Title 15

Inactive health records shall be retained in accordance with KMC policy and any applicable legal standards.

(29). Medical/Legal Issues

a) Collection of Forensic Evidence; Title 15, Section 1206

KMC will assure that Facility medical personnel, responsible for providing ongoing care to inmates, do not perform non-medical or forensic medical services, including drawing of blood alcohol samples, body cavity searches, and other functions for the purpose of prosecution. These types of services are prohibited by policy.

b) Informed Consent; Title 15, Section 1214

State and federal laws grant patients the right to make healthcare decisions, including the right to refuse medical treatment. It is the policy of KMC that medical treatment is provided only after the patient, or a person legally authorized to act on the patient's behalf, has consented to such treatment. If the recommended treatment involves the performance of a complex procedure, the physician is required to explain the nature of the treatment, the risks, possible complications, and expected benefits or effects of the treatment, as well as the alternatives to the treatment and their

risks and benefits, as part of the informed consent process. The physician is required to document in the medical record all aspects of the patient's condition and the reason for the medical intervention. Facility medical personnel verify that the physician has obtained the patient's informed consent before the physician is permitted to perform the medical procedure. The form signed by the patient assures that the physician obtained informed consent for the contemplated surgery or procedure, and indicates that the patient is aware of the right to give informed consent or refusal to the procedure recommended by the physician. Informed consent is not required for the performance of simple and common procedures, where the related risks are commonly understood.

(30). Telemedicine/Telepsychiatry

KMC in conjunction with Sheriff will apply KMC's existing policies, Policy No. PSY-RI-605 regarding telemedicine/telepsychiatry in general and Policy No. PCS-PC-2970 regarding the use of telemedicine for patient consultation, to assure appropriate processes and procedures are in place for the successful transmission and application of telemedicine for the treatment of inmates.

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EXHIBIT “B”

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and the County of Kern, on behalf of the Administrative Office and the Kern County Sheriff’s Office (collectively “**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of May 12, 2018 (the “**Effective Date**”).

RECITALS

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

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

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

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

AGREEMENT

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

ARTICLE I DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1.11 “**Unsecured PHI**” shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but

not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

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

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

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure.

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

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

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

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

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

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

2.7 Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15)

days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

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

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

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

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

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

ARTICLE III
OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

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

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

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

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

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

ARTICLE IV
TERM AND TERMINATION

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

4.2 Termination of Underlying Agreement.

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

County of Kern
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
Attn.: County Administrative Officer

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

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

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

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

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

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

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

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

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

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

COVERED ENTITY:

The Kern County Hospital Authority on
behalf of Kern Medical Center

Title: Chairman, Board of Governors

Date: _____

BUSINESS ASSOCIATE:

County of Kern

Title: Chairman, Board of Supervisors

Date: _____

EXHIBIT “C”

**KERN COUNTY JUSTICE FACILITY
BUDGET AND STAFFING COST
FY 2021-2022**

[See attached]



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

August 18, 2021

Subject: Proposed acceptance of donation of travel and related expenses from Safety National for “The Workers’ Compensation & Risk Conference”

Recommended Action: Approve; Adopt Resolution

Summary:

The Authority’s conflict of interest policy prohibits employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment.

Safety National covers the Authority’s workers’ compensation program. Safety National, through its risk fund, have offered to donate to the Authority all travel and related expenses for one Kern Medical employee to attend “The Workers’ Compensation & Risk Conference” in Dana Point, California, from September 7-10, 2021.

Kern Medical recommends your Board adopt the attached proposed resolution to accept the travel donation from Safety National for travel and related expenses and authorize the Chief Executive Officer to designate one employee to attend this important conference.

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

In the matter of:

Resolution No. 2021-____

**ACCEPTANCE OF DONATION OF
TRAVEL AND RELATED EXPENSES
FROM SAFETY NATIONAL FOR
“THE WORKERS’ COMPENSATION &
RISK CONFERENCE”**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 18th day of August, 2021, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The conflict of interest policy for the Kern County Hospital Authority (“Authority”) prohibits Authority employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment; and

(b) Safety National provides coverage for the workers' compensation program;
and

(c) Safety National, through its risk fund, has offered to donate to the Authority all travel and related expenses for one Authority employee to attend the "The Workers' Compensation & Risk Conference" in Dana Point, California, from September 7-10, 2021;
and

(e) The training session is necessary in connection with official Authority business; and

(f) The Authority desires to obtain the donation of travel and related expenses to the Authority and will retain full control over the use of the donation; and

(g) Safety National has not made any restrictions as to how the donation may be used.

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

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

2. This Board hereby accepts from Safety National the donation of travel and related expenses to cover all costs for one Authority employee to travel to Dana Point, California, to attend "The Workers' Compensation & Risk Conference" from September 7-10, 2021.

3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend "The Workers' Compensation & Risk Conference" in Dana Point, California, from September 7-10, 2021.

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

Chief Financial Officer
Legal Services Department
Human Resources Department



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

August 18, 2021

Subject: Kern County Hospital Authority Financial Report – June 2021

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Average Daily Census of 148 for June is 12 more than the June budget of 136 and 5 more than the 143 average over the last three months
- Admissions of 876 for June are 52 more than the June budget of 824 and 45 more than the 831 average over the last three months
- Total Surgeries of 527 for June are 57 more than the June budget of 470 and 4 more than the 523 average over the last three months
- Clinic Visits of 18,893 for June are 5,467 more than the June budget of 13,426 and 3,295 less than the 22,188 average over the last three months. The large budget variances are due to 3,287 of COVID-19 vaccinations provided during June

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

Patient Revenue:

Gross patient revenue has a favorable budget variance for June, and on a year-to-date basis, mainly because of strong average daily census levels. A January 1, 2021 price increase for many patient services is also responsible for the increase in revenue. In addition, there has been an overall increase in revenue cycle efficiency due to the implementation of the Cerner electronic health record. Gross patient revenue has increased 10% year-to-date compared to prior year.

Indigent Funding Revenue:

Indigent funding has a favorable budget variance for the month of June due to the receipt and recognition of additional funding from various programs that exceeded estimates. A total of \$15.2 million was received and consists of \$7.6 million of QIP revenue, \$2.7 million of PRIME revenue, and a \$4.9 million settlement payment from the FY14 Medi-Cal cost report. One-third of the \$15.2 million was recognized for April 2021, one-third of the revenue was recognized in May 2021, and one-third will be recognized in June 2021. In addition, Kern Medical received \$6.9 million more from the Medi-Cal Managed Care Rate Range Program than anticipated. Kern Medical has recognized half of the amount, or about \$3.45million, in May and will recognize \$3.45 million in June 2021. In addition, in June the accrual for anticipated income from the Quality Assurance Hospital Fee Program was reduced by \$4.9 million. On a year-to-date basis the receipt and recognition of \$3.570 million from the Low-Income Health Plan (LIHP) from prior years' program settlements also contributes to the favorable budget variance.

Other Operating Revenue:

Other operating revenue has a favorable budget variance for June due to the receipt of funds from the County of Kern for the operation of COVID-19 testing facilities and COVID-19 mobile vaccination units. This revenue is offset by Kern Medical's costs to provide these services for the County of Kern. Kern Medical also received an allocation of Proposition 56 funding in June. Proposition 56 is a California tax on tobacco products. The tax revenue is used for research, prevention, and treatment of tobacco related health issues.

Other Non-Operating Revenue:

Other non-operating revenue has a favorable budget variance for the month because of the recognition of COVID-19 revenue from the CARES Act Provider Relief Fund. Kern Medical received about \$2.4 million of CARES Act funds at the end of FY 2020. Recognition of the revenue was deferred to FY 2021 as Kern Medical accumulated COVID-19 related expenses to justify receipt of the funds. COVID-19 related funding is budgeted evenly throughout FY 2021 as other non-operating revenue; however, COVID-19 funding is not received consistently on a monthly basis. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Salaries Expense:

On a month-to-date and year-to-date basis, salaries are over budget due in large part to higher than average expenses for management and supervision, aides and attendants, and for physicians. Management and supervision and aides and attendant's salaries have both increased 15% over prior year and physician salaries have increased 6% over prior year. There has also been an increase in FTEs for sitters to monitor the influx of behavioral health patients with medical conditions admitted to medical/surgical units.

Benefits Expense:

On a month-to-date and a year-to-date basis, there is an unfavorable budget variance for benefits expense due to higher than average costs for paid time off (PTO), unemployment insurance, retirement, and pension obligations. However, these items account for a smaller percentage of total gross salaries this year than they did in prior year.

Nurse Registry Expense:

On both a month-to-date and year-to-date basis, Kern Medical is over budget for nurse registry expense. Departments operating over budget include the ICU and the ER. There is also additional contract nurse labor for COVID-19 activity. New vendors Emergency Medical Services Authority and Autumn Enterprise, Inc. have provided additional contract nurse labor services during the pandemic. These vendors were not accounted for in the FY 2021 budget.

Medical Fees:

Kern Medical operated at the budgeted dollar amount for medical fees for the month of June. On a year-to-date basis, medical fees are over budget primarily due to excessive fees paid to Total Renal Care, Inc. for dialysis procedures.

Other Professional Fees:

Other professional fees are over budget for the month and on a year-to-date basis due to an accrual for Allscripts IT services that were provided in prior periods.

Supplies Expense:

Supplies expense is over budget for the month and on a year-to-date basis due to a \$1.7 million year-end inventory adjustment to true-up supplies on hand for the pharmacies, laboratories, radiology, the operating room, and general supplies stored in the warehouse.

Purchased Services:

Kern Medical operated over budget for the month for purchased services expenses due to under accruals in the prior month for Hall Ambulance services and Signature Performance health record coders. In addition, the COVID-19 mobile clinic expenses are reported on this line item. The mobile clinic expenses are offset by reimbursement received from the County of Kern reported as other operating revenue. On a year-to-date basis, purchased services are over budget because of out-of-network contracted patient care services provided by other healthcare facilities and because of the mobile clinic expenses.

Other Expenses:

Other expenses are over budget for the month due to higher than average tuition and textbook expenses, a subscription paid for Presidio Networked Solutions, and high utility expenses. On a year-to-date basis, higher than average repairs and maintenance expenses and high utility expenses cause an unfavorable variance.

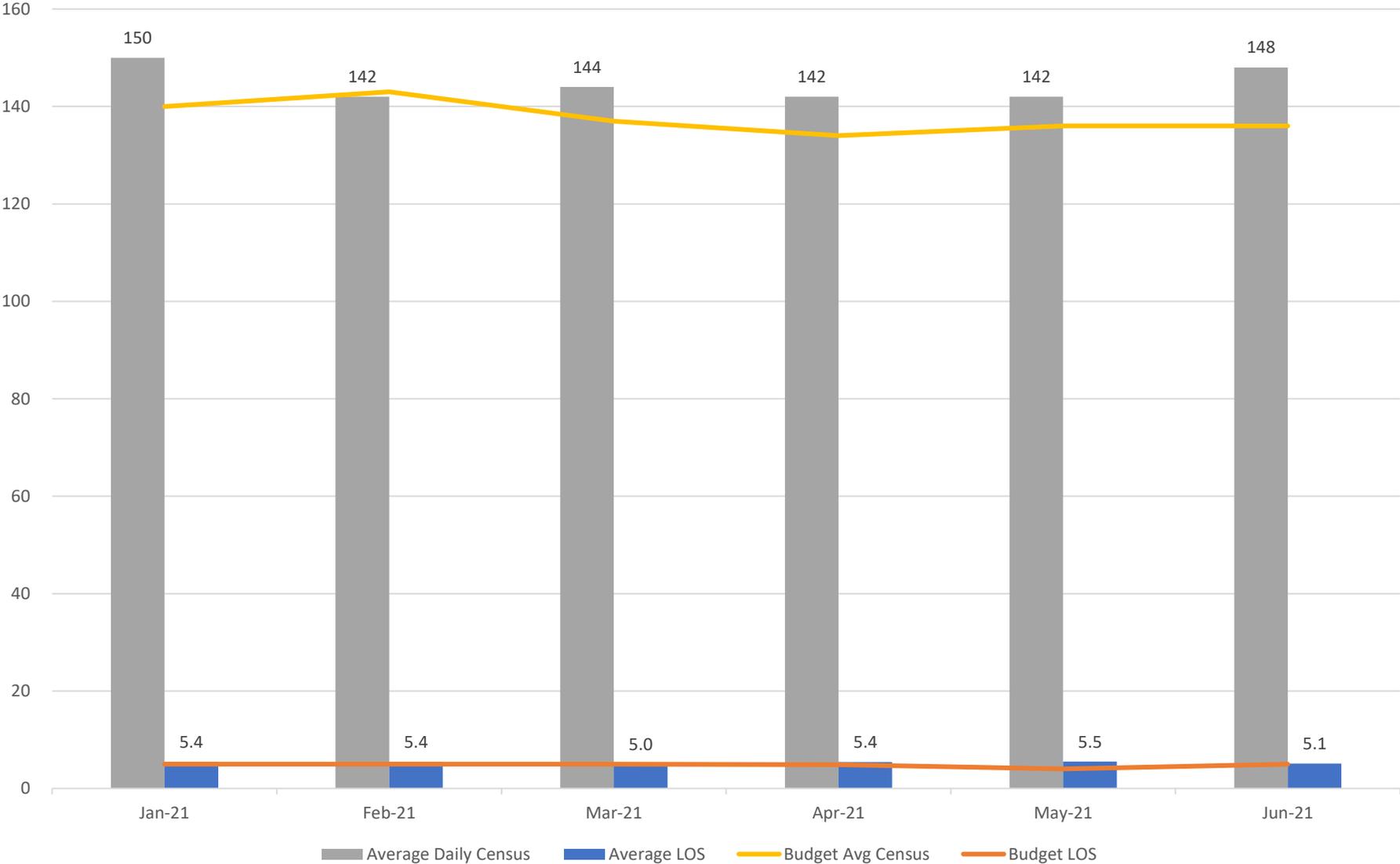
Depreciation and Amortization Expense:

Depreciation and amortization expense is over budget for the month and for the year because several construction-in-progress (CIP) projects were put into service during May and June and have now started depreciating each month.

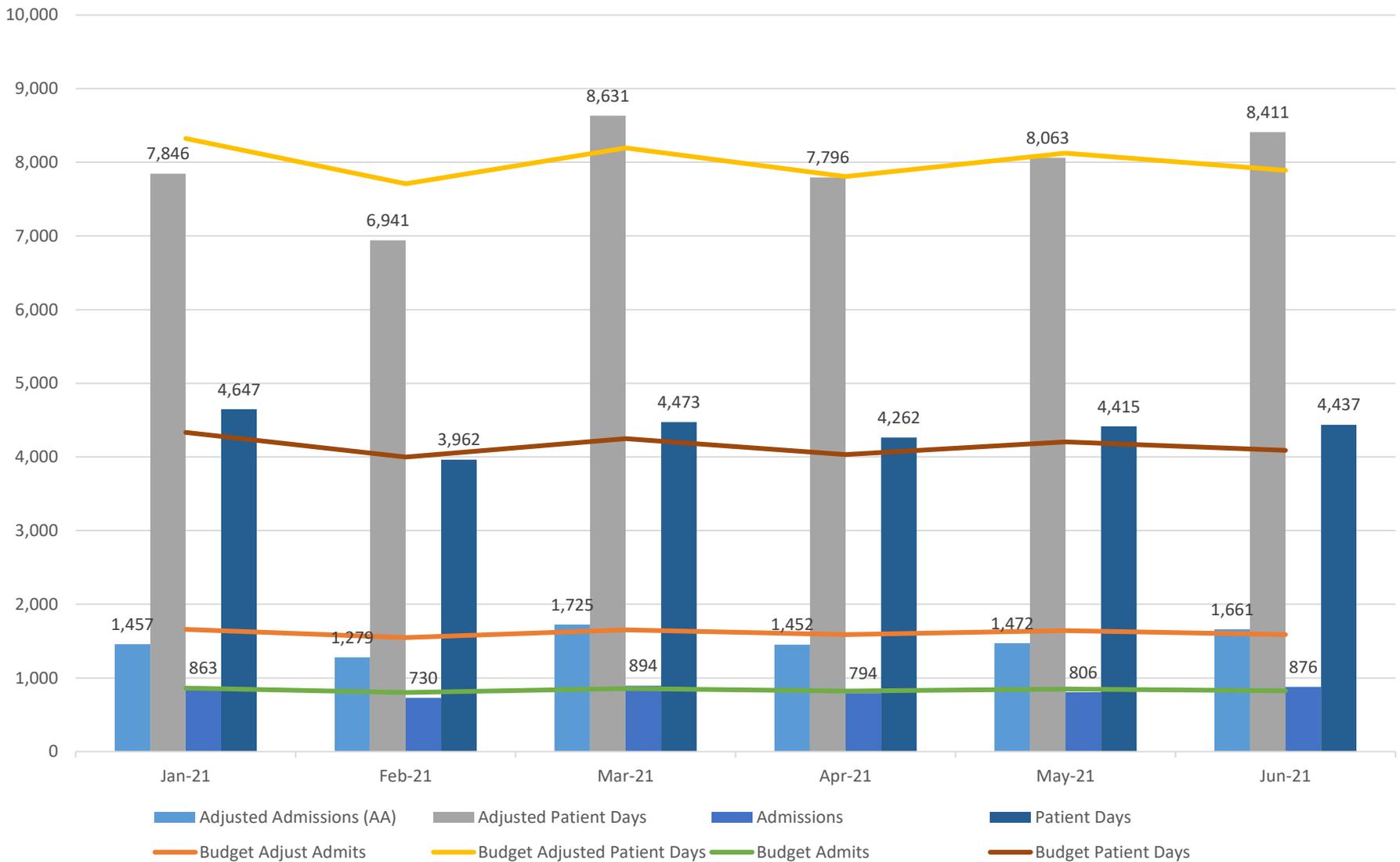


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – JUNE 2021**

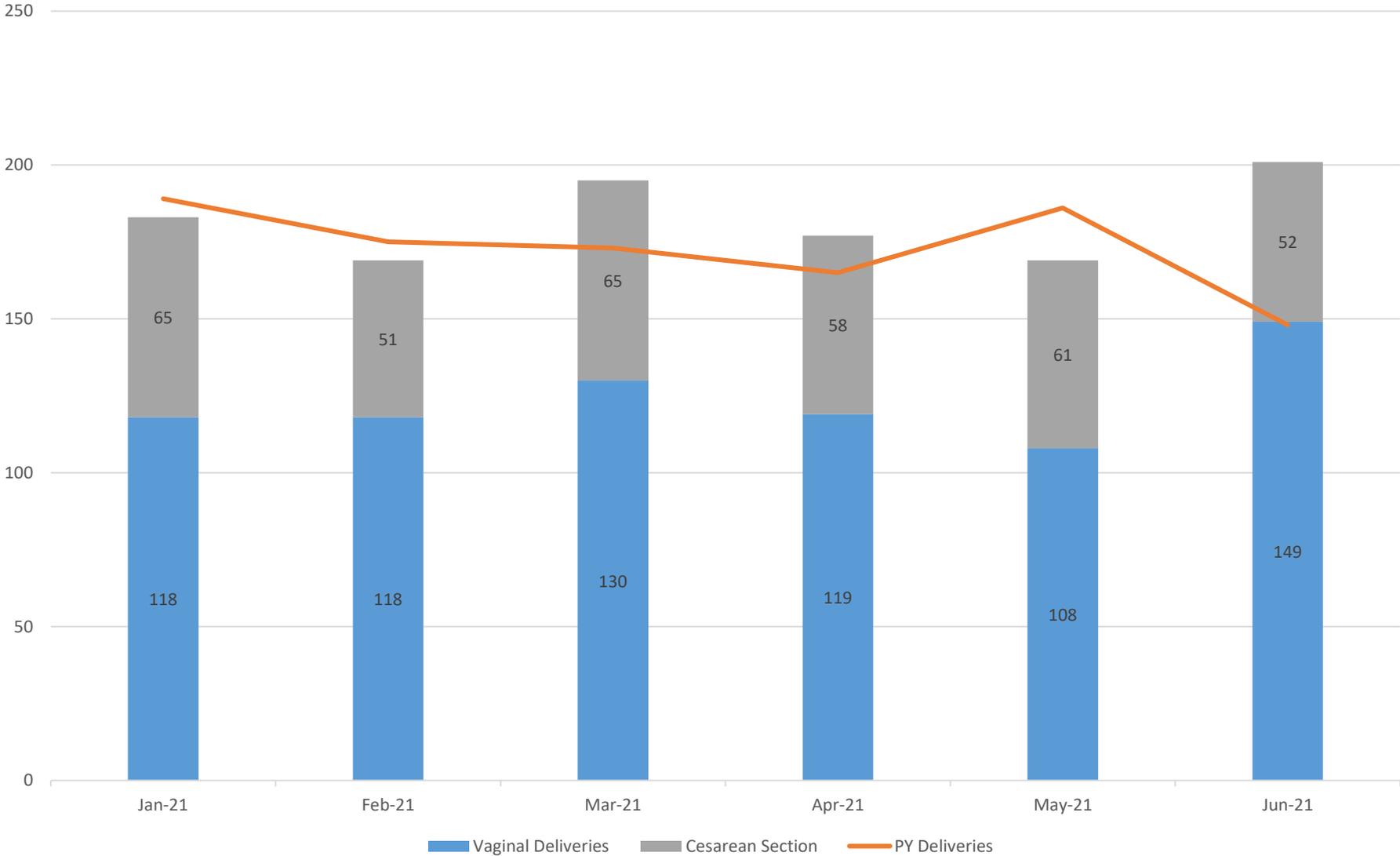
Census & ALOS



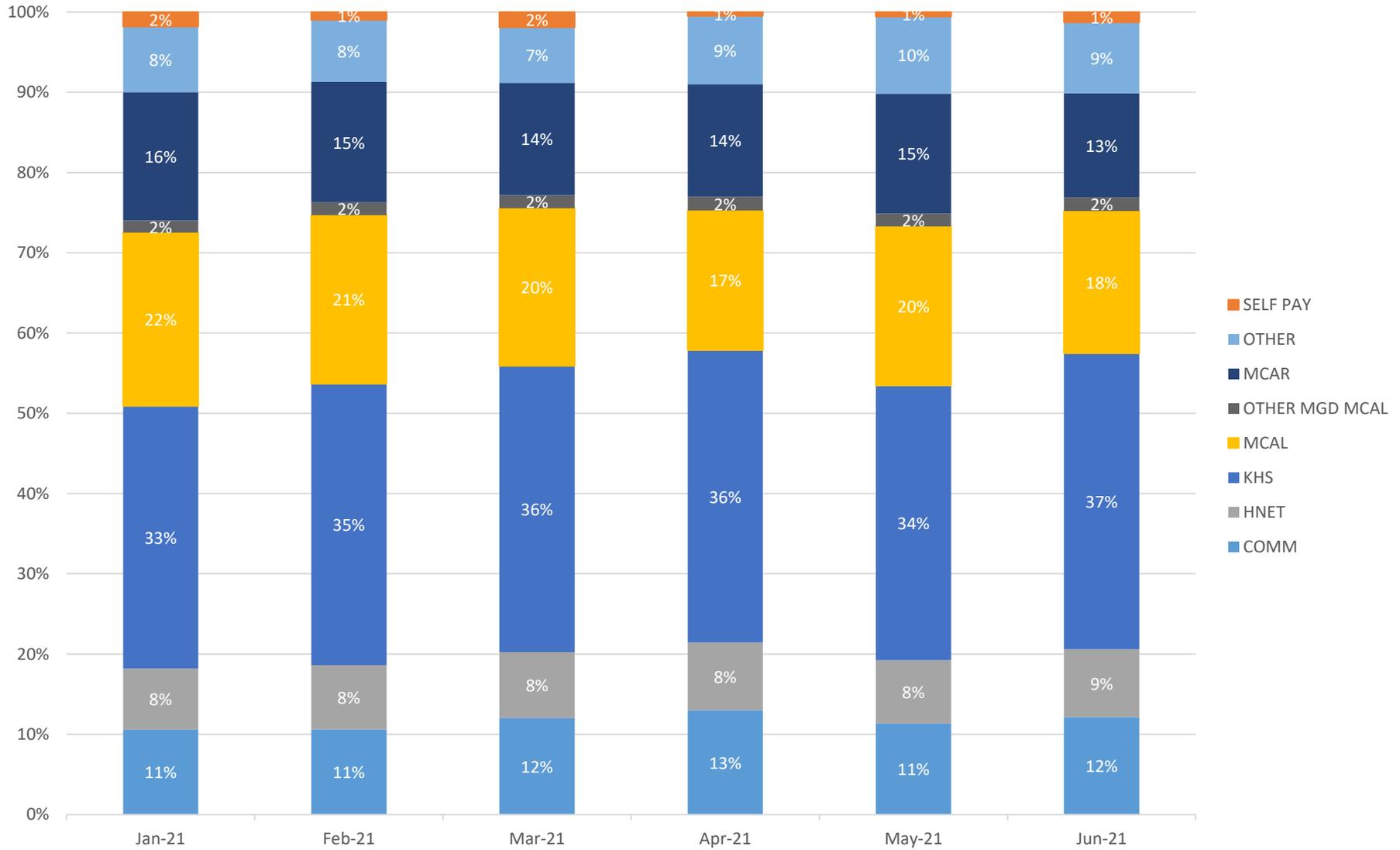
Hospital Volumes



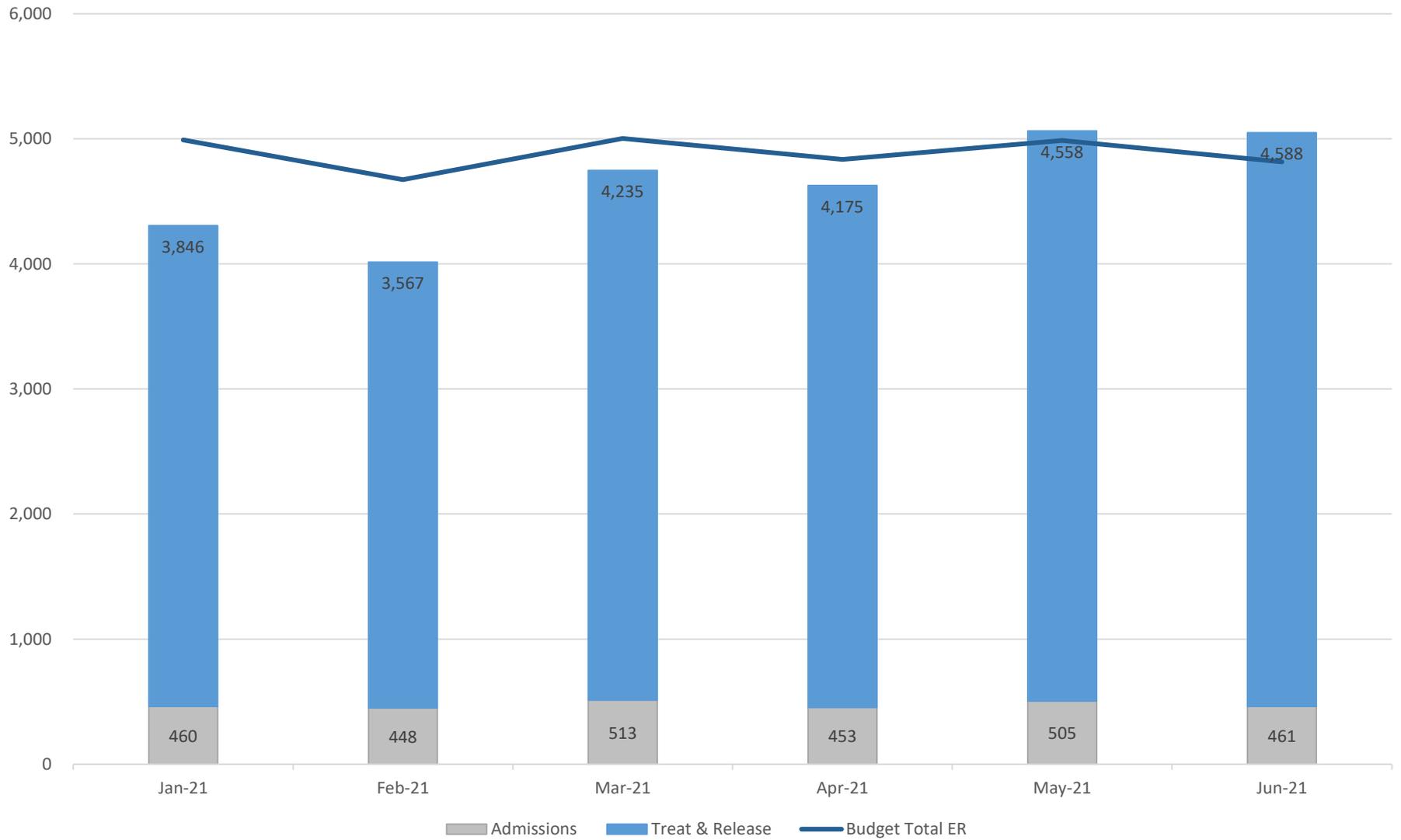
Deliveries



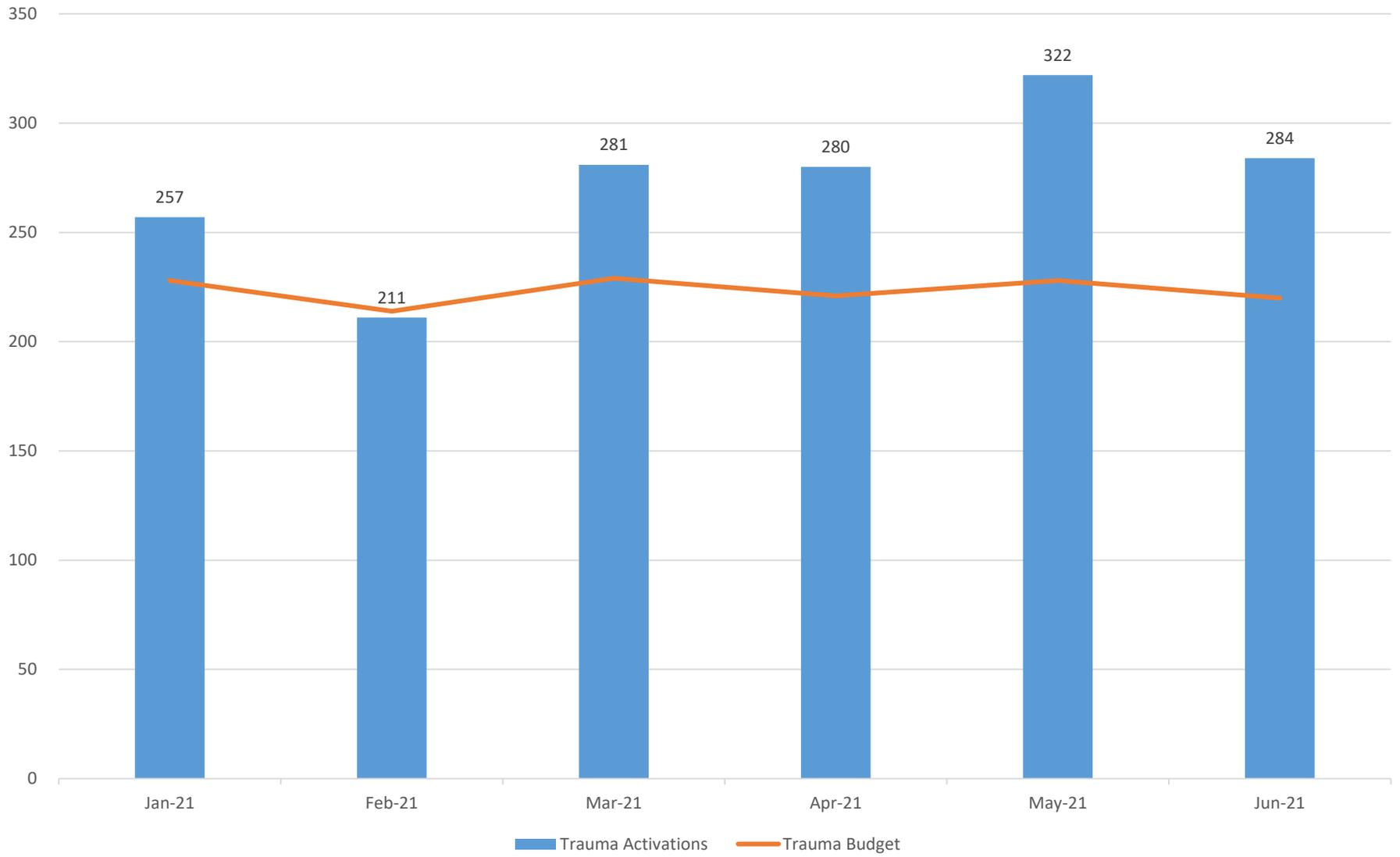
PAYER MIX



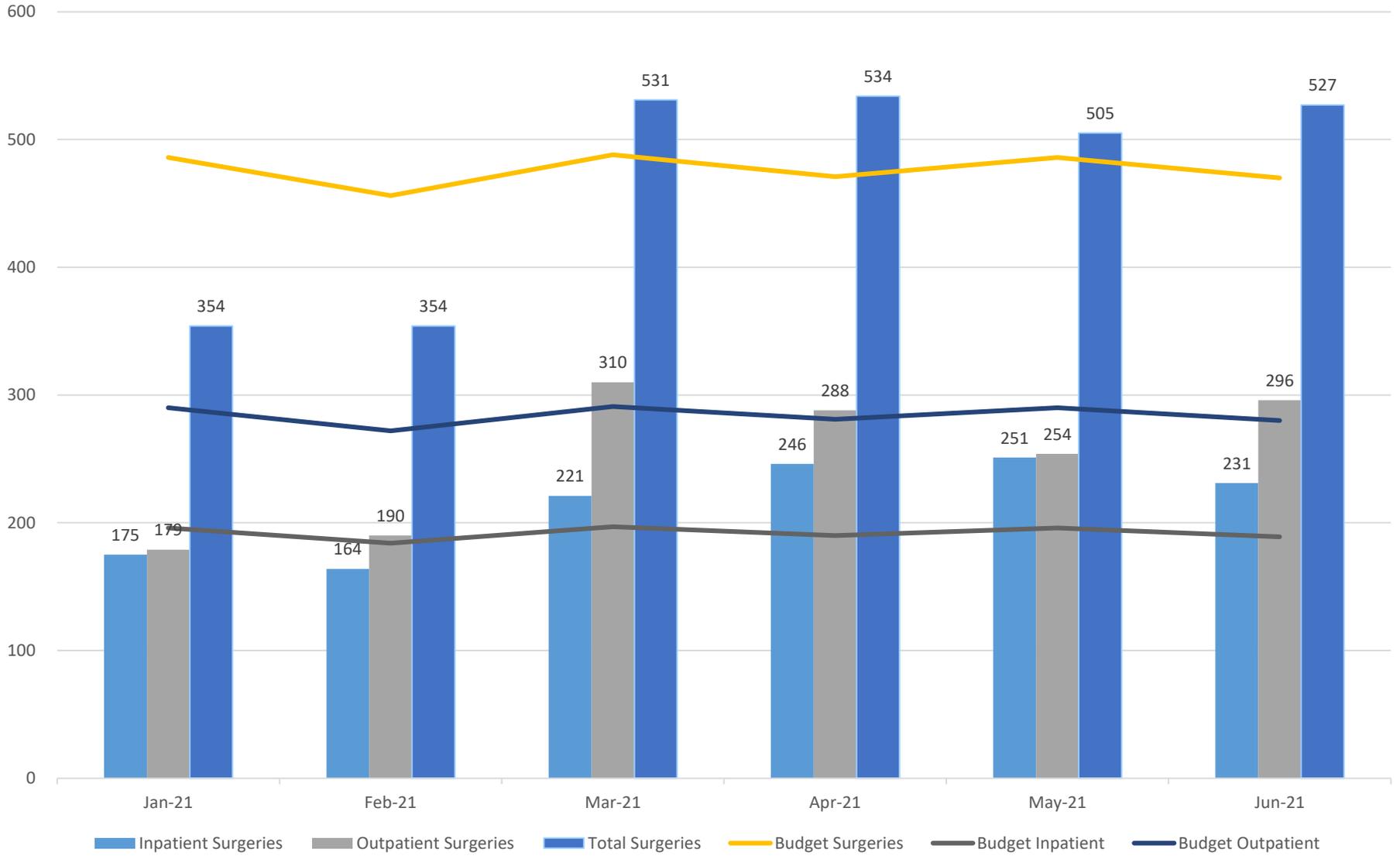
Emergency Room Volume



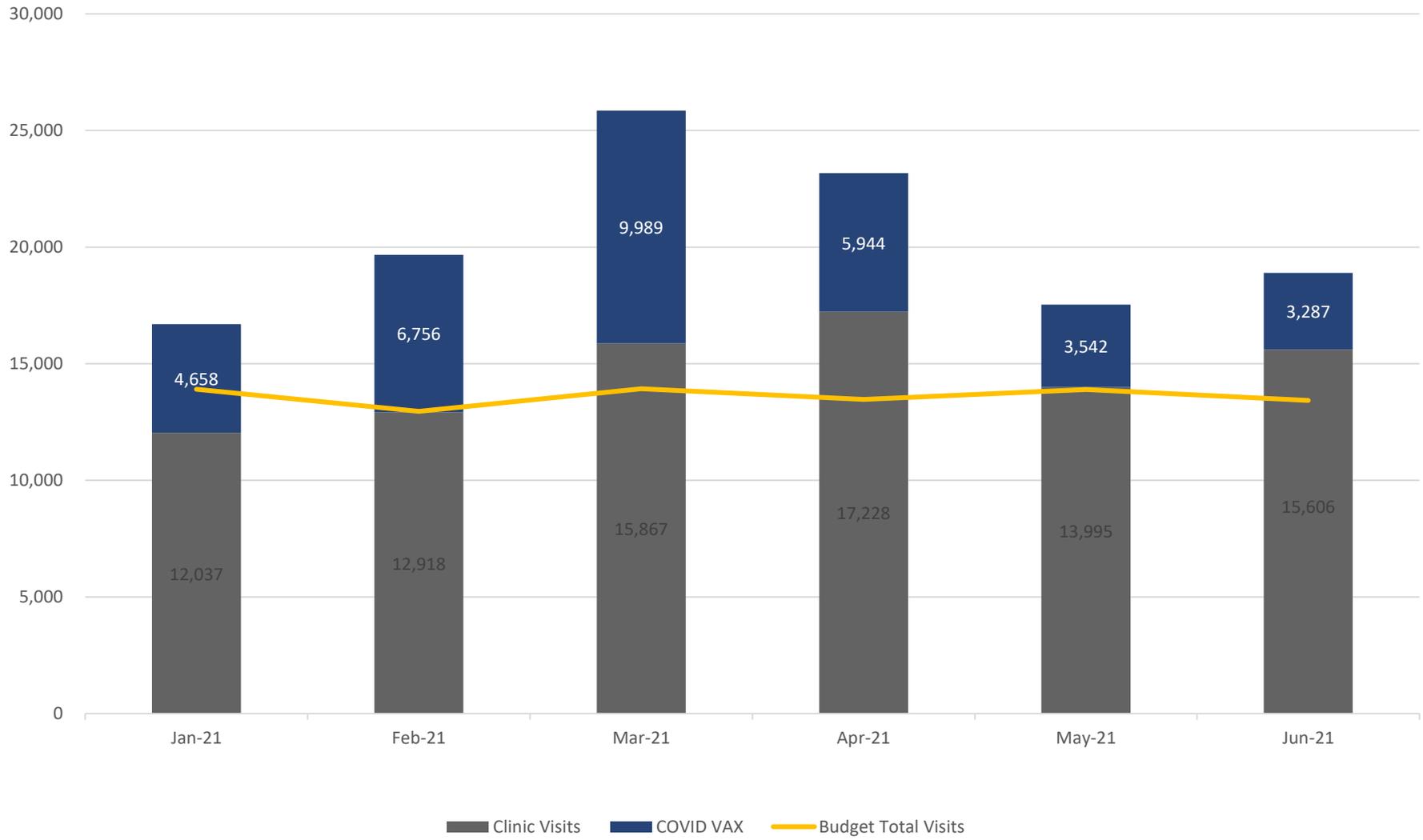
Trauma Activations



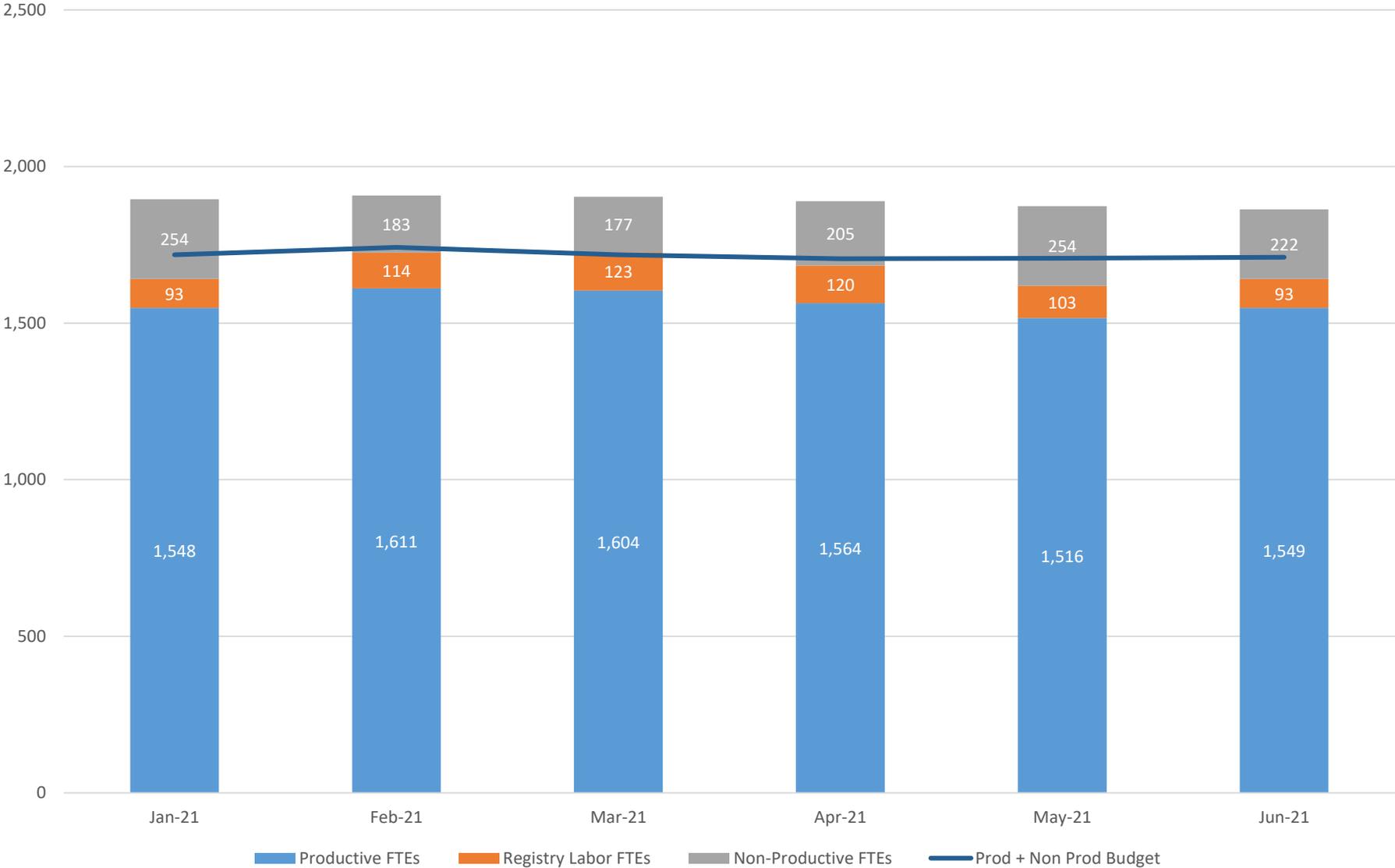
Surgical Volume



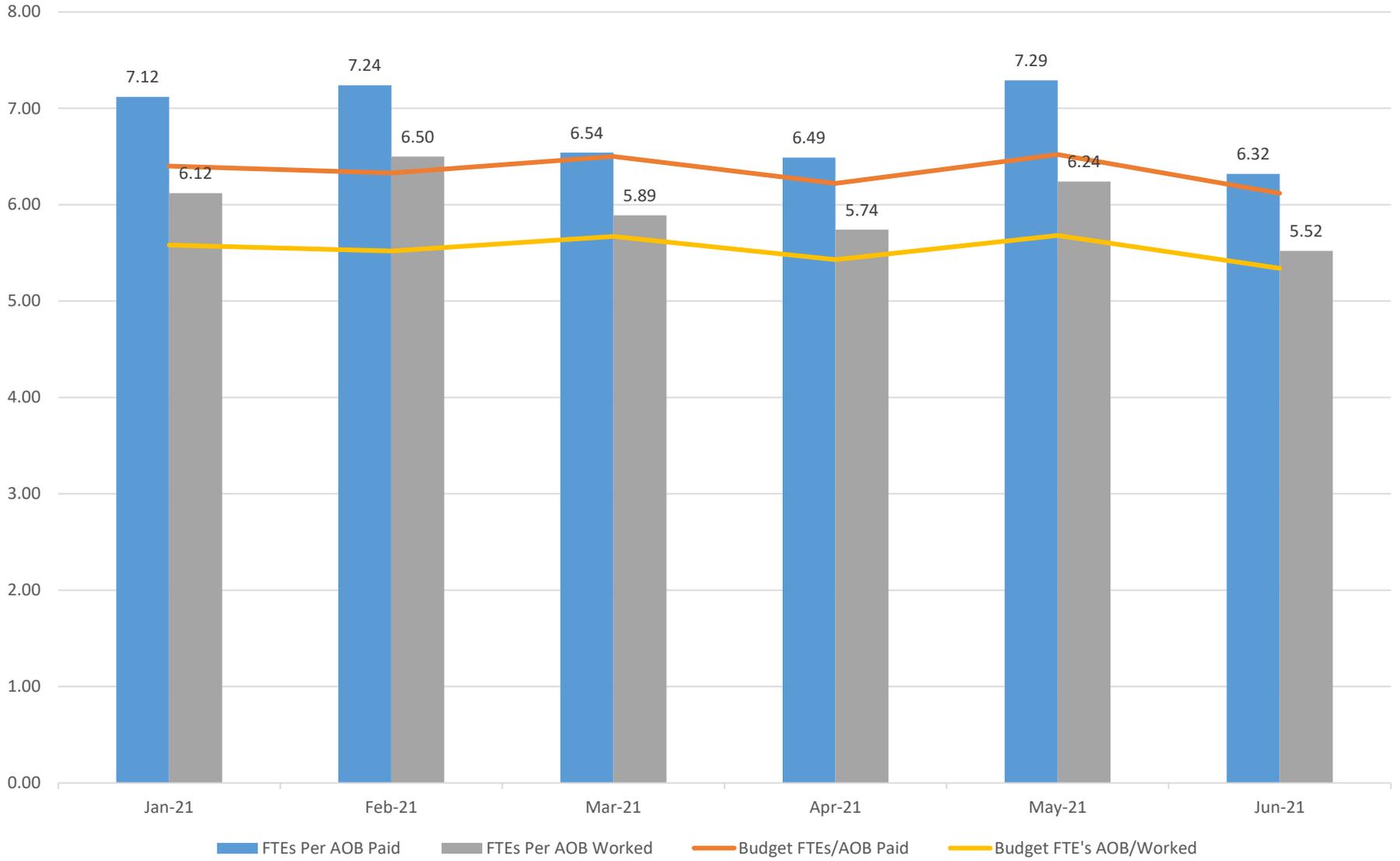
Clinic Visits



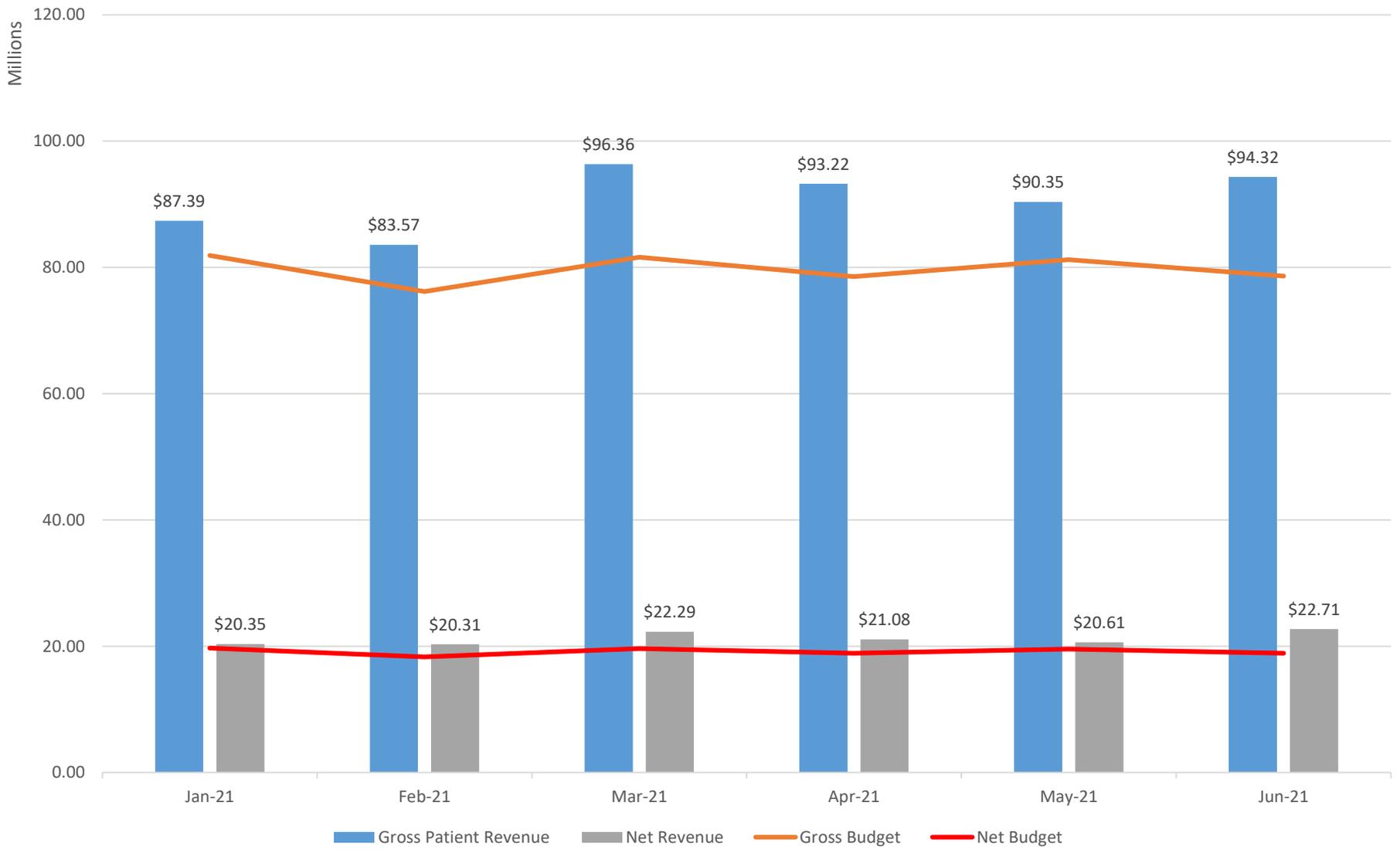
Productivity



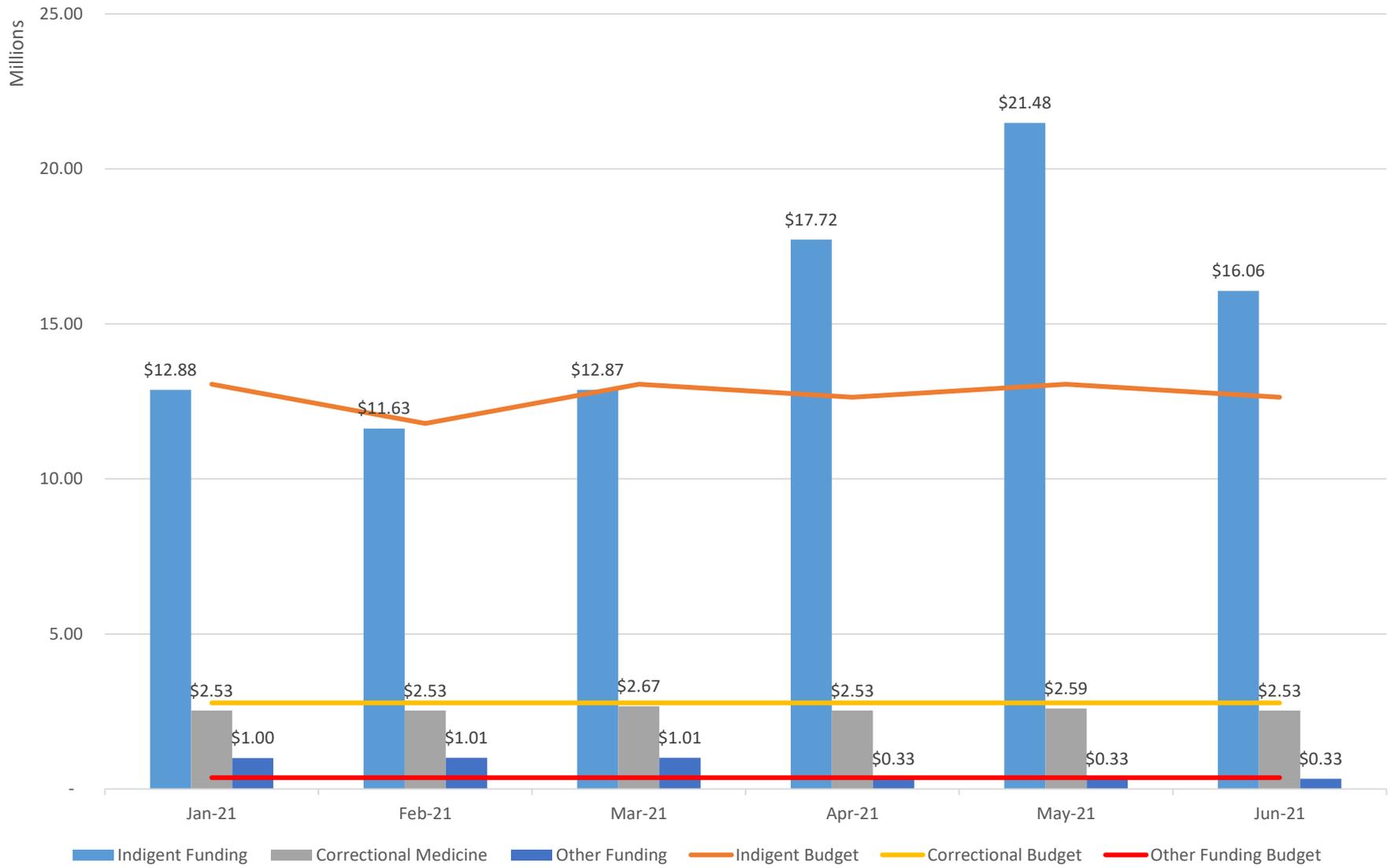
Labor Metrics



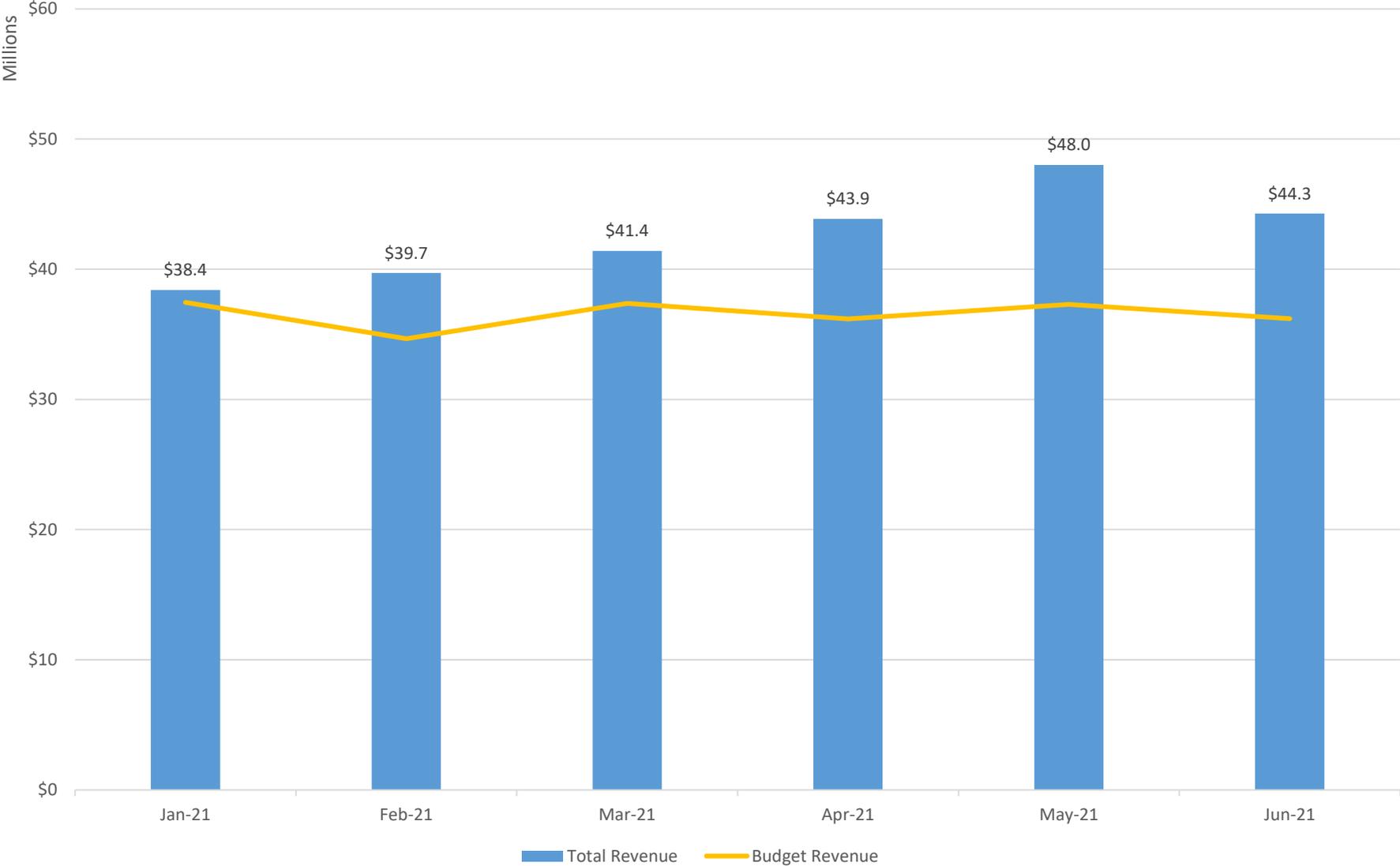
Patient Revenue



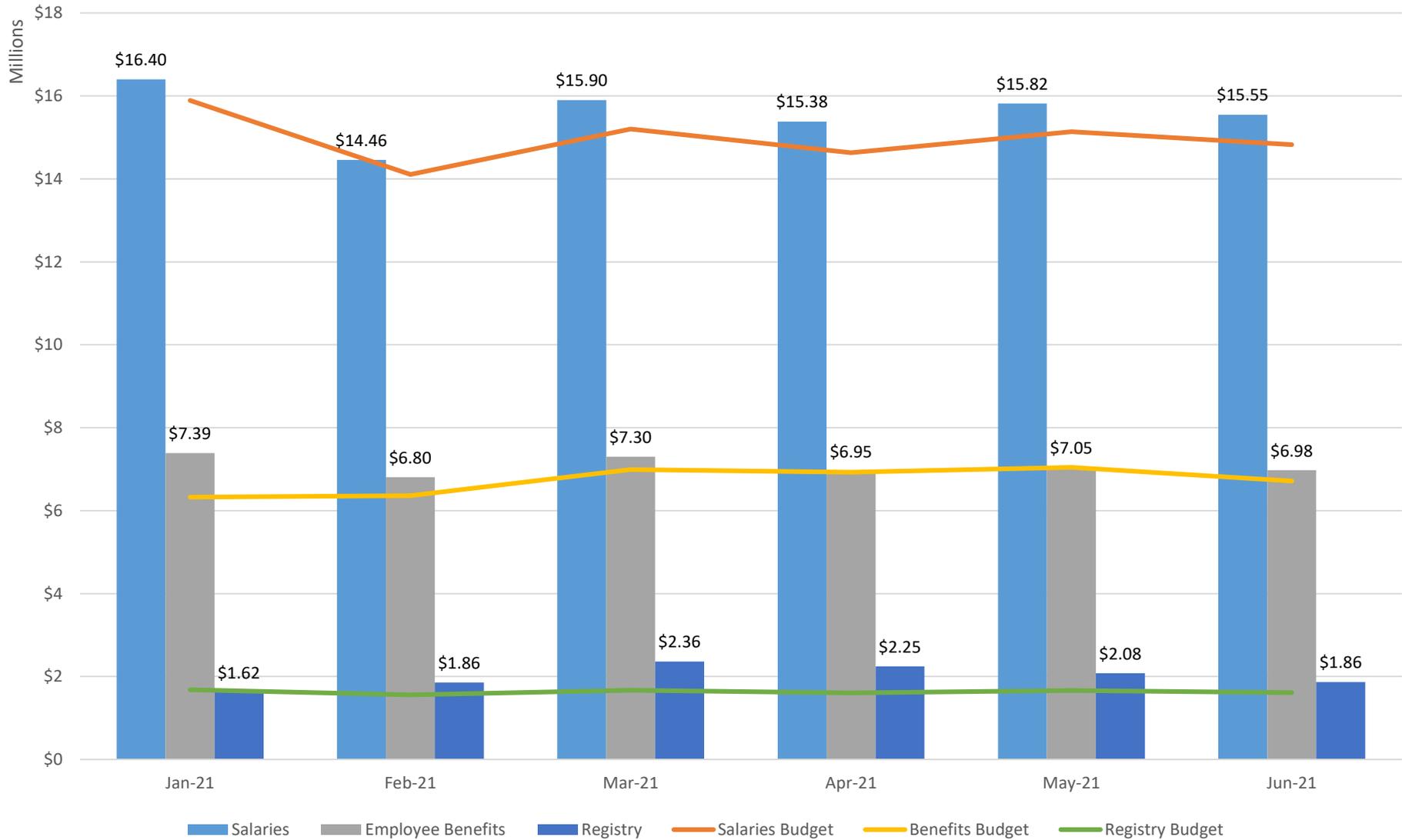
Indigent & Correctional Revenue



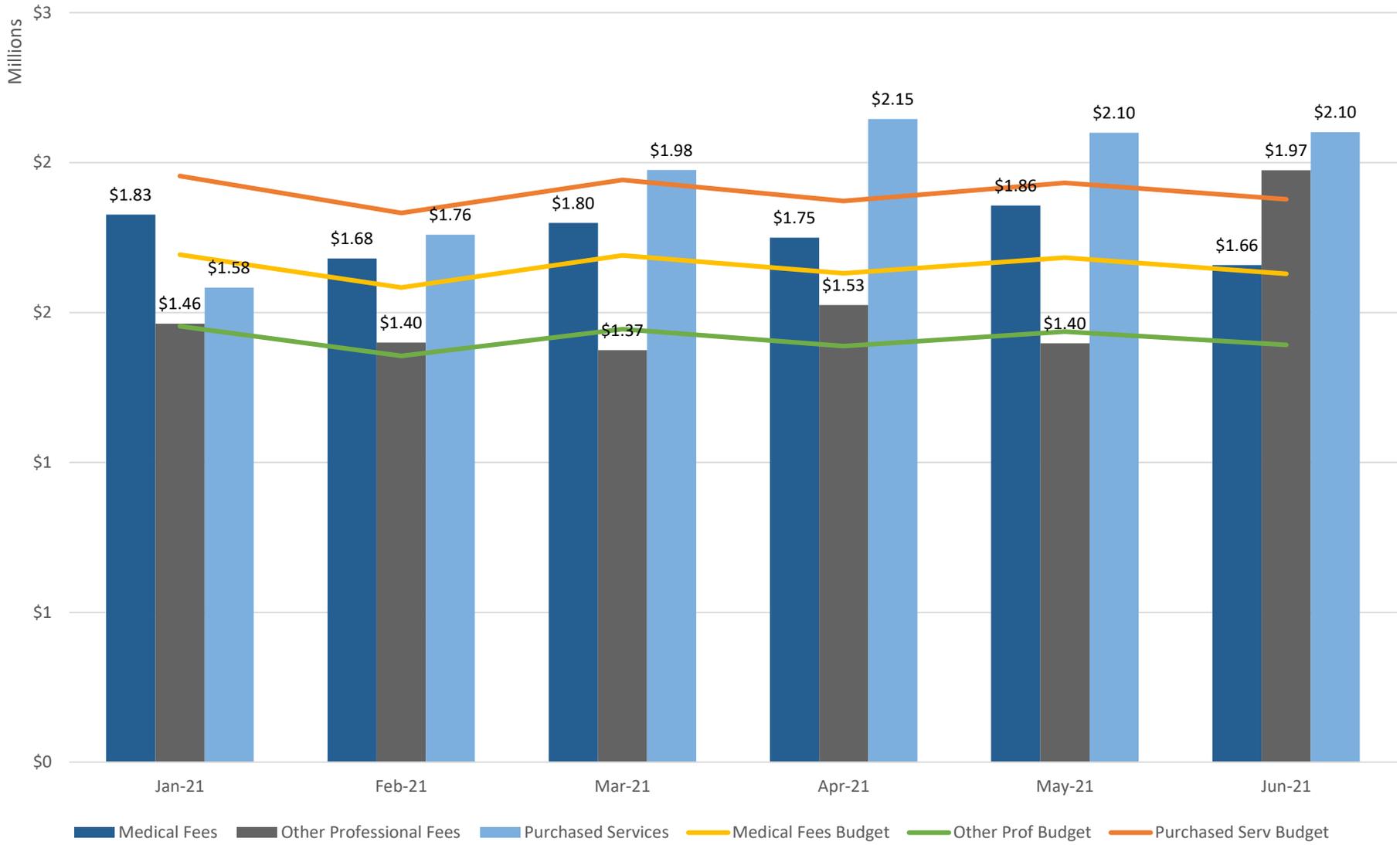
Total Revenue



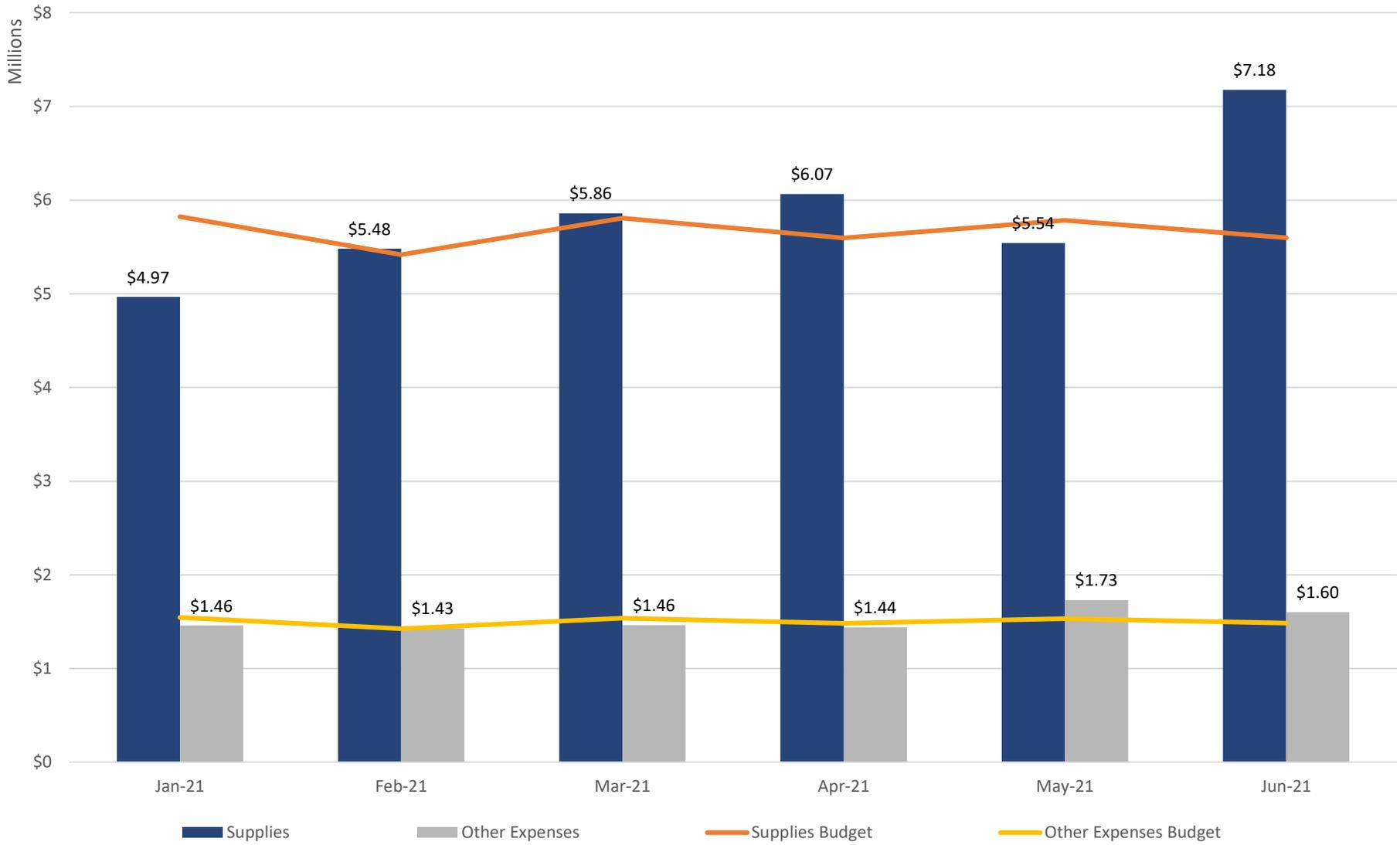
Expenses



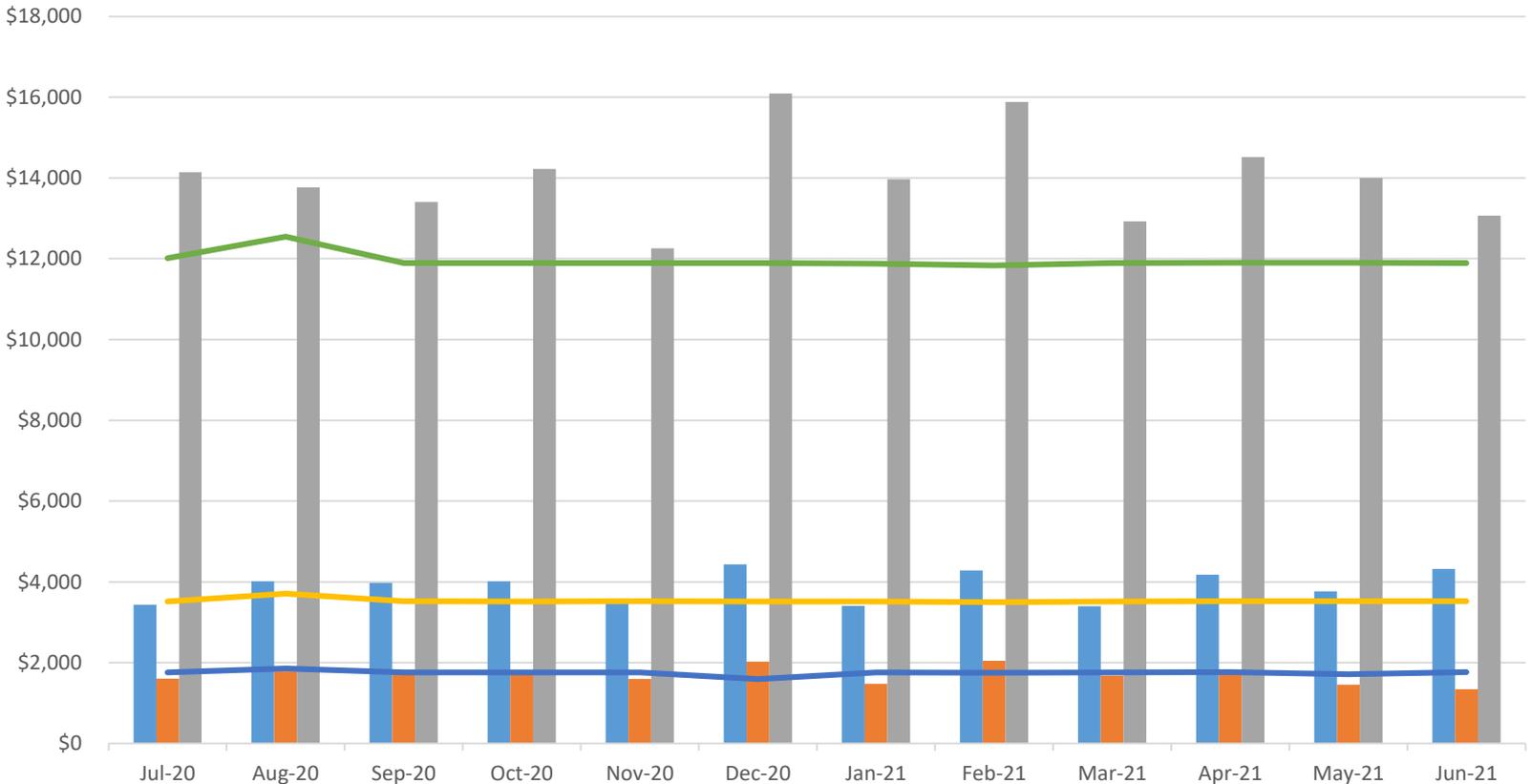
Expenses



Expenses

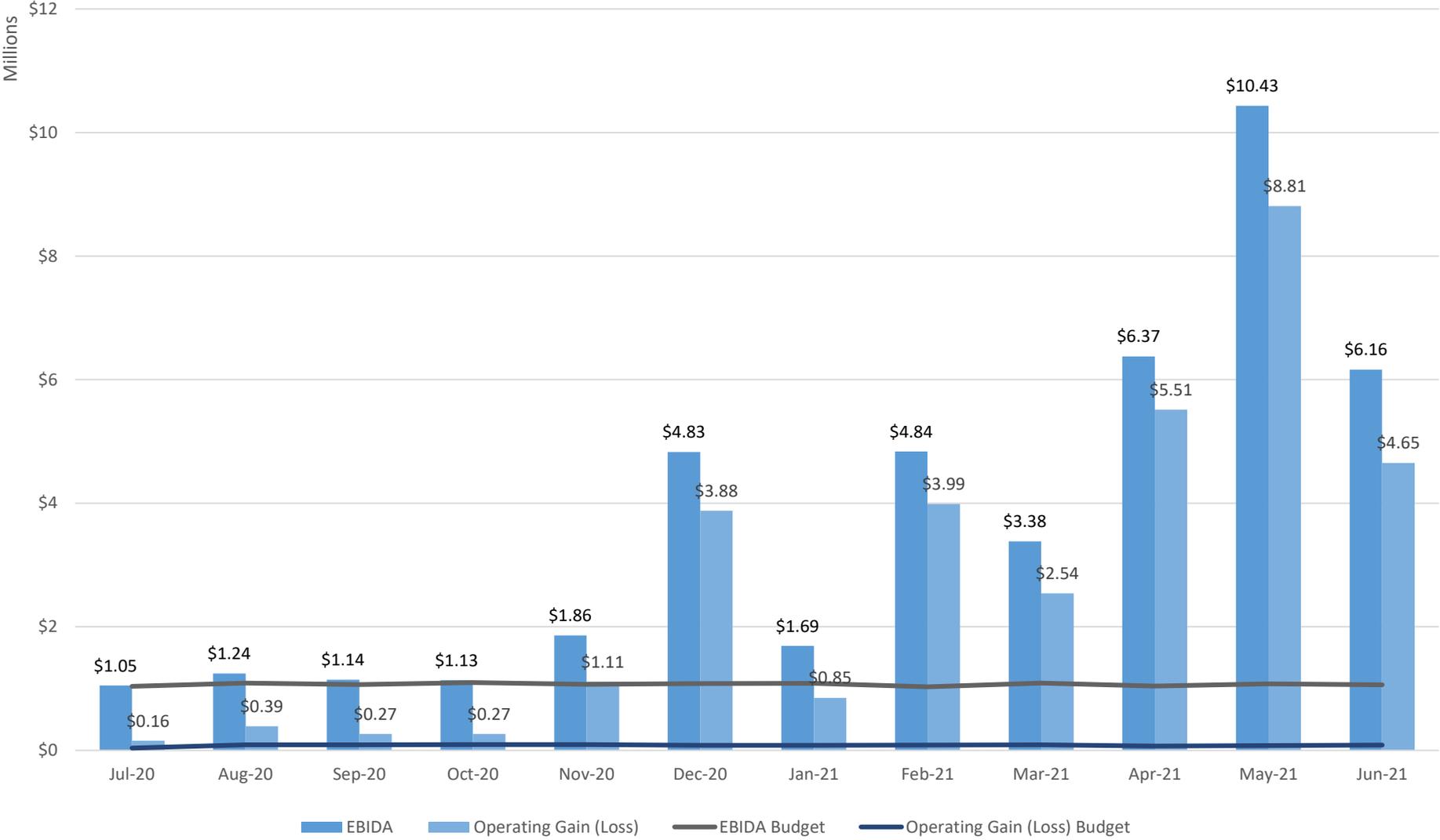


Operating Metrics

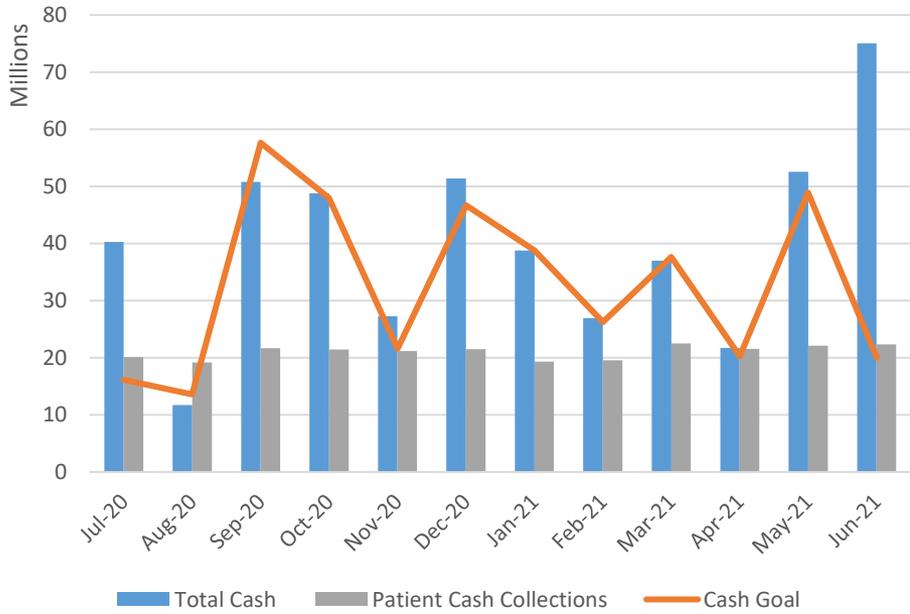


	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21
Supply Expense per AA	\$3,436	\$4,014	\$3,973	\$4,011	\$3,574	\$4,431	\$3,408	\$4,285	\$3,396	\$4,176	\$3,765	\$4,323
Pharm Cost per AA	\$1,604	\$1,787	\$1,823	\$1,735	\$1,597	\$2,028	\$1,481	\$2,050	\$1,678	\$1,809	\$1,458	\$1,345
Net Revenue Per AA	\$14,139	\$13,765	\$13,403	\$14,225	\$12,256	\$16,093	\$13,968	\$15,879	\$12,922	\$14,513	\$13,999	\$13,071
Budget Supp/AA	\$3,513	\$3,711	\$3,520	\$3,517	\$3,519	\$3,516	\$3,511	\$3,501	\$3,518	\$3,526	\$3,522	\$3,522
Budget Pharm/AA	\$1,760	\$1,859	\$1,763	\$1,762	\$1,762	\$1,596	\$1,759	\$1,755	\$1,763	\$1,767	\$1,714	\$1,764
Budget Net Rev/AA	\$12,011	\$12,543	\$11,892	\$11,891	\$11,893	\$11,893	\$11,882	\$11,833	\$11,892	\$11,902	\$11,900	\$11,897

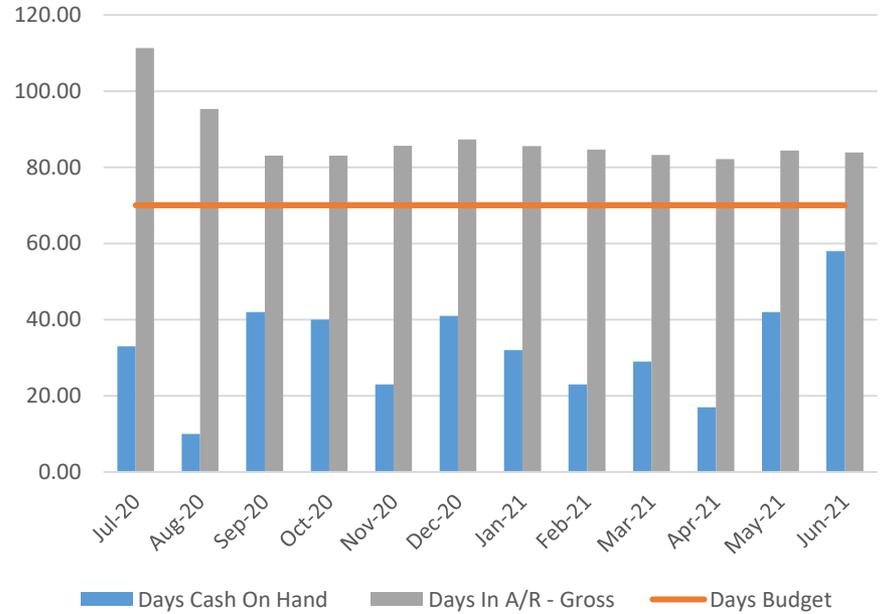
EBIDA 2021 FYTD



Cash 2021 FYTD



AR Days 2021 FYTD



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
June 30, 2021

	APRIL	MAY	JUNE	BUDGET JUNE	VARIANCE POS (NEG)	PY JUNE
Gross Patient Revenue	\$ 93,220,367	\$ 90,350,855	\$ 94,318,326	\$ 78,619,165	20%	\$ 71,804,287
Contractual Deductions	(72,142,766)	(69,744,813)	(71,613,043)	(59,710,619)	20%	(53,338,250)
Net Revenue	21,077,601	20,606,042	22,705,283	18,908,547	20.1%	18,466,037
Indigent Funding	17,718,307	21,480,999	16,062,210	12,634,647	27%	29,356,407
Correctional Medicine	2,531,665	2,594,724	2,531,665	2,777,068	(9%)	2,527,068
County Contribution	285,211	285,211	285,211	285,211	(0%)	285,211
Incentive Funding	41,667	41,667	41,667	83,333	(50%)	104,660
Net Patient Revenue	41,654,451	45,008,643	41,626,035	34,688,806	20.0%	50,739,383
Other Operating Revenue	2,206,117	1,725,702	3,259,421	1,227,785	165%	1,561,064
Other Non-Operating Revenue	15,489	1,270,529	389,271	276,653	41%	17,431
Total Revenue	43,876,057	48,004,873	45,274,726	36,193,244	25%	52,317,879
Expenses						
Salaries	15,383,985	15,817,374	15,549,537	14,826,509	5%	14,306,965
Employee Benefits	6,945,695	7,047,340	6,975,207	6,714,264	4%	6,954,857
Registry	2,245,519	2,079,722	1,863,763	1,609,644	16%	1,601,302
Medical Fees	1,749,903	1,856,884	1,658,574	1,629,602	2%	1,616,857
Other Professional Fees	1,525,326	1,397,258	1,974,856	1,392,272	42%	1,502,196
Supplies	6,065,140	5,541,552	7,389,416	5,597,474	32%	4,169,141
Purchased Services	2,145,648	2,100,012	2,101,592	1,878,068	12%	1,899,919
Other Expenses	1,440,073	1,730,438	1,600,455	1,486,353	8%	1,407,853
Operating Expenses	37,501,288	37,570,581	39,113,398	35,134,187	11%	33,459,092
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 6,374,769	\$ 10,434,292	\$ 6,161,328	\$ 1,059,057	482%	\$ 18,858,787
EBIDA Margin	15%	22%	14%	3%	365%	36%
Interest	123,018	121,483	156,970	226,116	(31%)	183,420
Depreciation	481,391	1,246,519	1,106,226	497,343	122%	496,173
Amortization	256,257	256,257	244,190	250,608	(3%)	256,257
Total Expenses	38,361,955	39,194,841	40,620,784	36,108,255	12%	34,394,943
Operating Gain (Loss)	\$ 5,514,103	\$ 8,810,033	\$ 4,653,942	\$ 84,989	5,376%	\$ 17,922,936
Operating Margin	12.6%	18.4%	10.3%	0.23%	4,278%	34.26%

KERN MEDICAL
Year-to-Date: Revenue & Expense

June 30, 2021

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
Gross Patient Revenue	\$ 1,058,831,698	\$ 961,285,384	10%	\$ 909,219,190	16%
Contractual Deductions	(810,776,180)	(730,053,077)	11%	(685,350,084)	18%
Net Revenue	248,055,518	231,232,307	7%	223,869,106	
Indigent Funding	172,603,834	153,721,540	12%	188,325,019	(8%)
Correctional Medicine	30,896,170	33,324,816	(7%)	33,588,642	(8.0%)
County Contribution	3,422,570	3,422,531	0%	3,422,531	0.0%
Incentive Funding	5,051,980	1,000,000	405%	2,225,060	127%
Net Patient Revenue	460,030,072	422,701,194	9%	451,430,358	2%
Other Operating Revenue	23,704,443	14,937,782	59%	19,527,240	21%
Other Non-Operating Revenue	4,409,831	3,331,676	32%	133,150	3,212%
Total Revenue	488,144,346	440,970,652	11%	471,090,749	4%
Expenses					
Salaries	187,887,075	180,484,633	4%	176,853,117	6%
Employee Benefits	85,320,886	81,438,478	5%	81,105,046	5%
Registry	21,492,735	19,683,546	9%	19,276,639	11.5%
Medical Fees	20,783,097	19,916,932	4%	20,450,061	2%
Other Professional Fees	17,333,308	17,030,785	2%	17,484,326	(1%)
Supplies	69,038,704	68,414,740	1%	61,206,496	12.8%
Purchased Services	23,270,531	22,937,862	1%	23,435,907	(1%)
Other Expenses	18,878,051	18,137,694	4%	18,138,517	4%
Operating Expenses	444,004,388	428,044,669	4%	417,950,110	6%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 44,139,959	\$ 12,925,983	241%	\$ 53,140,639	(17%)
EBIDA Margin	9%	3%	208%	11%	(20%)
Interest	1,600,657	2,751,083	(42%)	2,666,182	(40%)
Depreciation	7,050,615	6,026,200	17%	5,911,297	19%
Amortization	3,063,022	3,068,201	(0.2%)	2,369,891	29%
Total Expenses	455,718,682	439,890,153	4%	428,897,478	6%
Operating Gain (Loss)	\$ 32,425,664	\$ 1,080,499	2901%	\$ 42,193,271	(23%)
Operating Margin	7%	0.2%	2611%	9%	(26%)

**KERN MEDICAL
BALANCE SHEET**

	JUNE 2021	JUNE 2020
ASSETS:		
<i>Total Cash</i>	75,031,520	30,245,328
Patient Receivables Subtotal	256,158,058	271,430,580
Contractual Subtotal	(215,040,913)	(212,300,057)
<i>Net Patient Receivable</i>	41,117,144	59,130,522
Total Indigent Receivable	113,355,089	134,657,236
Total Other Receivable	6,358,948	5,320,692
Total Prepaid Expenses	4,342,845	3,297,972
Total Inventory	4,194,515	5,813,373
<i>Total Current Assets</i>	244,400,062	238,465,123
Deferred Outflows of Resources	87,863,462	85,573,671
Total Land, Equipment, Buildings and Intangibles	213,470,487	194,512,598
Total Construction in Progress	8,538,579	16,455,503
<i>Total Property, Plant & Equipment</i>	222,009,066	210,968,101
Total Accumulated Depr & Amortization	(125,382,810)	(115,672,717)
<i>Net Property, Plant, and Equipment</i>	96,626,256	95,295,384
<i>Total Long Term Assets</i>	87,863,462	85,573,671
<i>Total Assets</i>	428,889,780	419,334,178

**KERN MEDICAL
BALANCE SHEET**

	JUNE 2021	JUNE 2020
LIABILITIES & EQUITY:		
Total Accounts Payable	15,795,362	25,155,232
Total Accrued Compensation	26,751,894	27,024,713
Total Due Government Agencies	34,962,352	34,181,465
Total Other Accrued Liabilities	43,498,235	63,996,043
<i>Total Current Liabilities</i>	121,007,844	150,357,452
Unfunded Pension Liability	322,103,797	307,234,709
Other Long-Term Liabilities	80,914,207	103,115,962
<i>Total Long-Term Liabilities</i>	403,018,004	410,350,671
<i>Total Liabilities</i>	524,025,847	560,708,123
Fund Balance	36,714,022	36,913,884
Retained Earnings	(131,850,089)	(178,287,830)
<i>Total Fund Balance</i>	(95,136,068)	(141,373,946)
<i>Total Liabilities and Fund Balance</i>	428,889,780	419,334,178



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

August 18, 2021

Subject: Kern County Hospital Authority Chief Executive Officer Report

Recommended Action: Receive and File

Summary:

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

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

Health and Safety Code Section 101855(j)(2)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on August 18, 2021, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on August 18, 2021, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

- X CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Adria Ottoboni v. Kern County Hospital Authority, a public entity; and Does 1 through 50, inclusive, Kern County Superior Court Case No. BCV-19-102820 –

**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 18, 2021, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

- X CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Tyler Andrews, an individual v. Kern County Hospital Authority, a public agency that is a local unit of government, which owns and operates Kern Medical Center; and DOES 1 through 100, inclusive, Kern County Superior Court Case No. BCV-19-103529 TSC –

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

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on August 18, 2021, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

 X Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –