



## **AGENDA**

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

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

Regular Meeting  
Wednesday, August 21, 2024

11:30 A.M.

#### **BOARD TO RECONVENE**

Board Members: Berjis, Martinez, McLaughlin, Merz, Neal, Pelz, Pollard  
Roll Call:

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" OR "C" ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY KERN COUNTY HOSPITAL AUTHORITY STAFF. THE "CA" OR "C" 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

#### RECOGNITION

- 1) Presentation by the Chief Executive Officer recognizing August as Valley Fever Awareness Month –  
MAKE PRESENTATION

PUBLIC PRESENTATIONS

- 2) 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!

MEMBER ANNOUNCEMENTS OR REPORTS

- 3) 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

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on July 17, 2024 –  
APPROVE

CA

- 5) Proposed updated Conflict of Interest Policy and Code for Kern County Hospital Authority –  
APPROVE; REFER TO KERN COUNTY BOARD OF SUPERVISORS FOR APPROVAL

CA

- 6) Proposed retroactive Side Letter of Agreement to Memorandum of Understanding 089-2022 with Service Employees International Union, Local 521, amending Article VI, Section 6, adding premium pay for registered nurses who are assigned the role of high-risk delivery nurse, effective July 17, 2024 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE HUMAN RESOURCES STAFF TO IMPLEMENT CHANGES

CA

- 7) Proposed Amendment No. 5 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., an independent contractor, for professional medical services in the Department of Anesthesia for the period November 9, 2016 through November 8, 2025, adding hourly rates for per diem coverage in the operating room, and increasing the maximum payable by \$300,000, from \$24,504,801 to \$24,804,801, to cover the term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Amendment No. 3 to Agreement 055-2019 with United Neuroscience, Inc., an independent contractor, for professional medical services in the Department of Medicine for the period October 1, 2019 through September 30, 2024, extending the term for three years from October 1, 2024 through September 30, 2027, and increasing the maximum payable by \$3,710,000, from \$5,290,000 to \$9,000,000, to cover the extended term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN



CA

- 9) Proposed Agreement with Katayoun Sabetian, M.D., Inc., an independent contractor, for professional medical services in the Department of Medicine from September 1, 2024 through August 31, 2027, in an amount not to exceed \$1,200,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Agreement with Antonio L. Garcia, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology from October 1, 2024 through September 30, 2027, in an amount not to exceed \$1,650,700, plus applicable benefits –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Agreement with Frank W. Sabatelli, M.D., a contract employee, for professional medical services in the Department of Radiology from August 28, 2024 through August 27, 2027, in an amount not to exceed \$2,800,000, plus applicable benefits –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Personal/Professional Services Agreement with RS Studio, an independent contractor, for design and construction services from August 21, 2024 through August 20, 2027, in an amount not to exceed \$1,000,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Change Order No. 4 to Agreement 006-2024 with Heredia Cabling Solutions, Inc., an independent contractor, for installation of additional nurse call devices on the 3C and 4D nursing units, and increasing the maximum payable by \$41,905, from \$271,162 to \$313,067, to cover the term –  
MAKE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Personal/Professional Services Agreement with CBCM Services, Inc., an independent contractor, for installation of an emergency sewer line in an amount not to exceed \$308,859, effective August 21, 2024, until project completion –  
MAKE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE

CA

- 15) Proposed Change Order No. 4 to Agreement 107-2022 with McMurtrey Lince, Inc., an independent contractor, for construction services related to the Emergency Department isolation room, increasing the maximum payable by \$58,153, from \$607,609 to \$665,762, to cover additional project costs –  
MAKE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- CA  
16) Proposed retroactive First Amendment to Agreement 540-2021 with the County of Kern for Medi-Cal administrative activities for the period July 1, 2019 through June 30, 2024, extending the term for five years from July 1, 2024 through June 30, 2029 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA  
17) Proposed acceptance of donation of travel and related expenses from Healthfuse, LLC, for one Kern Medical Center employee to attend the Healthfuse Fall Client Summit on September 19, 2024 in Milwaukee, Wisconsin –  
APPROVE; ADOPT RESOLUTION
- CA  
18) Proposed Ordering Document CPQ-3522005 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, to secure equipment, software, and support for the management of vital signs devices from August 21, 2024 through December 31, 2027, in an amount not to exceed \$5,969, plus applicable fees and taxes –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA  
19) Proposed Engagement Letter from Moss Adams LLP, an independent contractor, regarding the audit of Kern Medical Center financial statements for the fiscal year ended June 30, 2024, in an amount not to exceed \$198,750 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA  
20) Proposed Amendment to Customer Agreement 10043609 with CareFusion Solutions, LLC, an independent contractor, for the return of two unused automated dispensing cabinets (Pyxis) –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA  
21) Proposed Agreement with Moh'd Akram Sbeih, M.D., a contract employee, for professional medical services in the Department of Surgery from September 23, 2024 through September 22, 2027, in an amount not to exceed \$2,100,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- 22) Proposed retroactive Agreement with Patton Sheet Metal Works, Inc., doing business as Patton Air Conditioning, an independent contractor, for emergency design and installation of two temporary air handlers, effective June 21, 2024, in an amount not to exceed \$624,292 –  
MAKE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE
- 23) Proposed retroactive Amendment 1 to Agreement 100-2023 with Mohammed A. S. Molla, M.D., a contract employee, for professional medical and administrative services in the Department of Psychiatry for the period August 16, 2023 through August 15, 2028, revising the payout date for the annual retention bonus from August 16, 2024 to August 16, 2027, effective August 15, 2024 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 24) Kern County Hospital Authority Chief Financial Officer report –  
RECEIVE AND FILE
- 25) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVE AND FILE
- CA
- 26) Monthly report on What's Happening at Kern Medical Center –  
RECEIVE AND FILE
- CA
- 27) Claims and Lawsuits Filed as of July 31, 2024 –  
RECEIVE AND FILE

ADJOURN AS KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNERS; RECONVENE  
AS KERN MEDICAL SURGERY CENTER, LLC BOARD OF MANAGERS

- C-28) Kern Medical Surgery Center, LLC, Administrative Report –  
RECEIVE AND FILE
- C-29) Proposed Master Services Agreement with Press Ganey Associates LLC, doing business as a  
Press Ganey Associates, Inc., an independent contractor, containing non standard terms and  
conditions, for regulatory reporting services from October 1, 2024 through September 30, 2027,  
in an amount not to exceed \$11,711 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- C-30) Proposed credentialing recommendations –  
APPROVE
- 31) Proposed retroactive Engagement Letter with Brown Armstrong Accountancy Corporation, an  
independent contractor, for Employee Retirement Income Security Act of 1974 (ERISA) audit  
for the 401(k) Profit Sharing Plan and Trust for calendar years ending 2021, 2022, and 2023 –  
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

ADJOURN AS KERN MEDICAL SURGERY CENTER, LLC BOARD OF MANAGERS; RECONVENE  
AS KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNERS

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 32) Request for Closed Session regarding peer review of health practitioners (Health and Safety  
Code Section 101855(j)(2)) –
- 33) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Maria Saenz, Applicant v. Kern  
Medical Center, Defendant, Workers' Compensation Appeals Board Case Numbers  
ADJ8168690, ADJ9837188, ADJ8911633 –

- 34) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(e)(3)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, SEPTEMBER 18, 2024 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.

CA

27) CLAIMS AND LAWSUITS FILED AS OF JULY 31, 2024 –  
RECEIVE AND FILE

- A) Claim in the matter of Michael Leon Hed
- B) Claim in the matter of Scott Steven Scilagyi
- C) Petition for Relief from Claim Statute in the matter of Korey Edwards, an individual, Petitioner, v, Kern Valley Healthcare District; Kern County; Kern County Hospital Authority; State of California; and DOES1-25, inclusive
- D) Claim in the matter Raymond Loya III
- E) Claim in the matter of Chris Hernandez
- F) Claim in the matter of Roberto Morales
- G) Claim in the matter of Lazaro Flores
- H) Claim in the matter of Billy Darnell Johns



**SUMMARY OF PROCEEDINGS**  
**KERN COUNTY HOSPITAL AUTHORITY**  
**BOARD OF GOVERNORS**

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

Regular Meeting  
Wednesday, July 17, 2024

11:30 A.M.

**BOARD RECONVENED**

Board Members: Berjis, Martinez, McLaughlin, Merz, Neal, Pelz, Pollard  
Roll Call: 6 Present; 1 Absent - Neal

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

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

**BOARD ACTION SHOWN IN CAPS**

**PUBLIC PRESENTATIONS**

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. 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**

**MEMBER ANNOUNCEMENTS OR REPORTS**

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2)) –  
**NO ONE HEARD**

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors special meeting on June 26, 2024 –  
APPROVED  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 4) Proposed appointment of Thiagarajan Nandhagopal, M.D., as Chief, Division of Pediatrics, effective July 17, 2024 –  
MADE APPOINTMENT  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

NOTE: DIRECTOR MARTINEZ ANNOUNCED THAT, DUE TO HER EMPLOYMENT WITH THE COUNTY OF KERN, SHE WOULD ABSTAIN FROM VOTING ON ITEM 5

CA

- 5) Proposed rescission of Amendment No. 2 (Agreement 097-2024) to Agreement 554-2021 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, and retroactive approval of Amendment No. 2 to Agreement 554-2021 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 in-custody adult inmates at Kern Justice Facility, extending the term for two years from July 1, 2024 through June 30, 2026, and amending the subordination provision –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 119-2024  
**Pelz-Pollard: 5 Ayes; 1 Abstention - Martinez; 1 Absent - Neal**

CA

- 6) Proposed Amendment No. 2 to Personal/Professional Services Agreement 137-2022 with Mesa Energy Systems, Inc., doing business as Emcor Services Hillcrest, an independent contractor, for HVAC maintenance and repair services for the period December 2, 2022 through December 1, 2025, increasing the maximum payable by \$250,000, from \$1,500,000 to \$1,750,000, to cover the term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 120-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 7) Proposed Change Order No. 2 to Agreement 076-2023 with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for installation of additional devices for the temporary nurse call system in the Emergency Department, increasing the maximum by \$5,384, from \$148,470 to \$153,854, to cover project costs –  
MADE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVED;  
AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 121-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 8) Proposed Agreement with Mission Linen Supply, an independent contractor, for linen supply services from August 1, 2024 through July 31, 2027, in an amount not to exceed \$3,672,480 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 122-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**



CA

- 9) Proposed First Amendment to Lease Agreement 2016-013 with the County of Kern for lease of a portion of the Multi-Use Warehouse at the Mount Vernon Complex, for a rental credit in the amount of \$6,678 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 123-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 10) Proposed Amendment No. 2 to Personal/Professional Services Agreement 55521 with Skarphol/Frank Associates, doing business as Skarphol Associates, an independent contractor, for architectural and engineering services for major maintenance and capital projects, for the period November 19, 2021 through November 18, 2024, extending the term for three years from November 19, 2024 through November 18, 2027 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 124-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 11) Proposed Amendment No. 4 to Personal/Professional Services Agreement 21218 with Thyssenkrupp Elevator Corporation, an independent contractor, for elevator repair services for the period August 3, 2018 through June 30 2024, extending the term for four months from July 1, 2024 through October 30, 2024, and increasing the maximum payable by \$49,178, from \$730,000 to \$779,178, to cover the term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 125-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 12) Proposed Personal/Professional Services Agreement with Patton Sheet Metal Works, Inc., doing business as Patton Air Conditioning, an independent contractor, for installation of steam lines, effective July 17, 2024, in an amount not to exceed \$263,202 –  
MADE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 126-2024; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 13) Proposed Ordering Document CPQ-3488140 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 127-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 14) Proposed Ordering Document CPQ-3488331 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 128-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 15) Proposed Ordering Document CPQ-3488385 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 129-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 16) Proposed Ordering Document CPQ-3488412 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 130-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 17) Proposed Ordering Document CPQ-3488445 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 131-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 18) Proposed Sales Terms with Utah Medical Products, an independent contractor, containing nonstandard terms and conditions, for purchase of umbilical catheters, in an amount not to exceed \$7,500 –  
APPROVED AGREEMENT 132-2024; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FUTURE SALES ORDERS  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 19) Proposed Quote Q-00316807 with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for telemetry software upgrades and additional telemetry monitors in the Diagnostic Treatment Center, in an amount not to exceed \$12,022 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 133-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 20) Proposed IBE SMA Standard Software Maintenance Agreement with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for telemetry software upgrades and maintenance, from August 1, 2024 through July 31, 2028, in an amount not to exceed \$30,120 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 134-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 21) Proposed Quote 2301406246 with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of telemetry equipment for 2 Center, in an amount not to exceed \$13,934 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 135-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 22) Proposed Quote Q-00326625 with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of telemetry equipment for the Operating Room, in an amount not to exceed \$100 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 136-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 23) Proposed Schedule A-9 to Agreement 039-2021 with Healthcare Performance Group, Inc., an independent contractor, for electronic health record consulting services, from August 5, 2024 through September 6, 2024, increasing the maximum payable by \$22,400, from \$315,360 to \$337,760, plus expenses –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 137-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 24) Proposed Memorandum of Understanding with Committee of Interns and Residents/Service Employees International Union, Local 1957, from July 17, 2024 through June 30, 2027, in an amount not to exceed \$4,429,196 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 138-2024; AUTHORIZED HUMAN RESOURCES STAFF TO IMPLEMENT CHANGES  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 25) Proposed Side Letter of Agreement to Memorandum of Understanding 089-2022 with Service Employees International Union, Local 521, amending Article VI, Section 6, adding premium pay for registered nurses who are assigned the role of high-risk delivery nurse, effective July 17, 2024  
**WITHDRAWN**

CA

- 26) Proposed Master Service Agreement with PatientNow, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of electronic medical record software from August 1, 2024 through July 31, 2025, in an amount not to exceed \$4,656 plus taxes and fees –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 139-2024  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

CA

- 27) Proposed acceptance of donation of travel and related expenses from Decision Resource, Inc., doing business as Clarivate, for two Kern Medical Center employees to attend the 2024 Member Retreat, "Resilience: Navigating from Recovery to High-Functioning Innovation," from August 14-15, 2024, in Austin, Texas –  
APPROVED; ADOPTED RESOLUTION 2024-019  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

- 28) Kern County Hospital Authority Chief Financial Officer report –  
CHIEF FINANCIAL OFFICER ANDREW CANTU HEARD; RECEIVED AND FILED  
**Berjis-Merz: 6 Ayes; 1 Absent - Neal**
- 29) Kern County Hospital Authority Chief Executive Officer report –  
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON HEARD; DIRECTOR MARTINEZ  
HEARD REGARDING IMPLEMENTATION OF SB 43; DIRECTOR POLLARD HEARD  
REGARDING MARKETING STRATEGIES  
RECEIVED AND FILED  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**
- CA  
30) Monthly report on What's Happening at Kern Medical Center –  
RECEIVED AND FILED  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**
- CA  
31) Claims and Lawsuits Filed as of June 30, 2024 –  
RECEIVED AND FILED  
**Pelz-Pollard: 6 Ayes; 1 Absent - Neal**

ADJOURNED TO CLOSED SESSION  
**Martinez-Merz**

CLOSED SESSION

- 32) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 33) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(e)(3)) Number of cases: Three (3) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection – SEE RESULTS BELOW
- 34) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION  
**Pollard-Merz**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item 32 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 POLLARD, SECOND BY DIRECTOR PELZ; 1 ABSENT - DIRECTOR NEAL), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, REQUEST FOR ADDITIONAL CLINICAL PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

NOTE: CHIEF EXECUTIVE OFFICER SCOTT THYGERSON LEFT THE ROOM PRIOR TO THE DISCUSSION ON AGENDA ITEM 33

Item 33 concerning CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(e)(3)) Number of cases: Three (3) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection – HEARD; NO REPORTABLE ACTION TAKEN

NOTE: CHIEF EXECUTIVE OFFICER SCOTT THYGERSON RETURNED TO THE MEETING FOLLOWING THE DISCUSSION ON AGENDA ITEM 33

Item 34 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, AUGUST 21, 2024 AT 11:30 A.M.

**Pollard**

/s/ Mona A. Allen  
Authority Board Coordinator

/s/ Phillip McLaughlin  
Chairman, Board of Governors  
Kern County Hospital Authority



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

August 21, 2024

**SUBJECT:** Proposed Conflict of Interest Policy for Kern County Hospital Authority

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

**Summary:**

The enabling county ordinance at section 2.170.102 requires the Hospital Authority and its officers and directors to conduct activities in a manner this is in conformity with the laws of the state of California as they pertain to conflicts of interest, including, but not limited to the Political Reform Act (Gov. Code, § 81000 et seq.), financial interests involving contracts (Gov. Code, § 1090), common law conflicts of interest,<sup>1</sup> and incompatible activities.<sup>2</sup>

The purposes of this policy are: (1) to preserve the integrity of the decision-making process of the Hospital Authority, (2) to prevent intentional or inadvertent participation in the decision-making process by persons having an actual or apparent conflict of interest, (3) to promote compliance with the process by which conflicts of interest are disclosed and managed in accordance with state laws, and (4) to prevent violations of state conflict of interest laws.


The attached reflects our recommended changes to the policy and conflict of interest code. The policy was updated to conform to the California Fair Political Practices Commission gift limits in effect from January 1, 2023 – December 31, 2024. The conflict of interest code was revised to reflect the current list of designated covered individuals by title or classification. The proposed changes have been reviewed and approved as to legal form by Counsel.

Therefore, it is recommended that your Board approve the conflict of interest policy for the Kern County Hospital Authority and refer to the Kern County Board of Supervisors for approval.

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<sup>1</sup> Each member of the Hospital Authority Board of Governors and officers shall discharge his or her duties with integrity and fidelity and may not let private interests influence public decisions.

<sup>2</sup> In accordance with Section 101855(o) of the Health and Safety Code, a member of the Hospital Authority's administrative staff shall not be considered to hold an incompatible office or to be engaged in activities inconsistent and incompatible with his or her duties as a result of his or her employment or affiliation with the County of Kern or an agency of the County.

	<b>Department: Administration</b>			
	Policy No. ADM-LD-700	Effective Date: <del>August 2024</del> <del>September 2022</del>	Review Date: <del>August 2024</del> <del>September 2022</del>	Page 1 of 6 (with addendums)
<b>Title: Conflict of Interest</b>				

## POLICY STATEMENT:

It is the policy of ~~the~~ Kern County Hospital Authority (“Hospital Authority”) to provide for a process for the disclosure and management of conflicts of interest which may exist for persons with positions of trust and responsibility in the governance and management of the Hospital Authority, and to assure that state law provisions<sup>1</sup> relating to such conflicts are followed. In order to safeguard independent judgment and action in business decisions, each person entrusted with a key position of responsibility in the Hospital Authority has a duty to disclose actual or potential conflicts of interest, to avoid acting out of any actual or apparent conflict of interest which may arise from personal financial interests in entities which may conflict with the Hospital Authority’s best interests. The purposes of this policy are: (i) to preserve the integrity of the decision-making process of the Hospital Authority, (ii) to prevent intentional or inadvertent participation in the decision-making process by persons having an actual or apparent conflict of interest, (iii) to promote compliance with the process by which conflicts of interest are disclosed and managed in accordance with state laws, and (iv) to prevent violations of state conflict of interest laws.

## DEFINITIONS:

- A. “Covered Individual” means those individuals identified in the attached Appendix A.
- B. “Financial interest” means for purposes of this policy a Covered Individual has a “financial interest” in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the employee or an immediate family member or on: (1) any business entity in which the Covered Individual has a direct or indirect investment worth \$2,000 or more; (2) any real property in which the Covered Individual has a direct or indirect interest worth \$2,000 or more; (3) any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$5290<sup>2</sup> or more in value provided to, received by or promised to the Covered Individual within 12 months prior to the time when the decision is made; (4) any business or entity in which the Covered Individual is a director, officer, partner, trustee, employee, or holds any position of management; and (5) any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$~~520-590~~ or more in value provided to, received by or promised to the Covered Individual within 12 months prior to the time when the decision is made.
- C. “Immediate family member” means the Covered Individual’s spouse; natural or adoptive parent, child or sibling; stepparent, stepchild, stepbrother or stepsister; father-in-law, mother-in-law, brother-in-law or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

<sup>1</sup> Government Code section 1090; Government Code section 81000 et seq.

<sup>2</sup> California Fair Political Practices Commission gift limit effective January 1, ~~2021-2023~~ - December 31, ~~2022~~~~2024~~.



- D. "Indirect investment or interest" means any investment or interest owned by the spouse or dependent child of the Covered Individual, by an agent on behalf of the Covered Individual, or by a business entity or trust in which the Covered Individual, or Covered Individual's agent, spouse, and dependent children own directly, indirectly, or beneficially a 10% interest or greater.

## **1.0 ACTS CONSTITUTING CONFLICT OF INTEREST**

- A. No Covered Individual shall engage in any employment, activity or enterprise that results in any of the following:
1. Using the prestige or influence of a Hospital Authority office or employment for private gain or advantage, or the private gain or advantage of another;
  2. Using Hospital Authority time, facilities, equipment or supplies for the Covered Individual's private gain or advantage, or the private gain or advantage of another;
  3. Using confidential information acquired by virtue of Hospital Authority office or employment for the Covered Individual's private gain or advantage, or the private gain or advantage of another;
  4. Receiving or accepting money or any other consideration from anyone other than the Hospital Authority for the performance of an act which the Covered Individual would be required or expected to render in the regular course or hours of office or employment or as part of duties as a Covered Individual;
  5. Performance of an act in other than the Covered Individual's capacity knowing that such act may later be subject, directly or indirectly, to the control, inspection, review, audit or enforcement by the Covered Individual or by the Hospital Authority;
  6. Make, participate in making or in any way attempt to use the Covered Individual's position to influence a governmental decision (other than a decision affecting an employee's wages, hours, or working conditions) in which the Covered Individual knows or has reason to know that the Covered Individual has a financial interest; or
  7. Non-Hospital Authority employment or self-employment outside of regular working hours which involves such time demands or services of such a character as to impair effectiveness of Hospital Authority employment.
- B. Any violation of the provisions contained in the aforementioned section shall constitute sufficient grounds for disciplinary action up to and including termination of employment.

## **2.0 EXEMPTION FOR CERTAIN PHYSICIAN SERVICES**

Those physicians rendering professional services to Kern Medical Center or other Hospital Authority businesses under contract authorizing billing for services to non-indigent patients shall not be deemed to be in violation of the provisions of Section 1.0 of this policy in billing for such services so rendered.

## **3.0 POST-EMPLOYMENT RESTRICTIONS REGARDING REPRESENTATION, APPEARANCE OR COMMUNICATION**

- A. Employees classified as management, mid-management or confidential, shall not, for a period of one year after leaving employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to the Hospital Authority or a present member of the Board of Governors or any officer or employee of the Hospital Authority if the appearance or communication is made for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

- B. Subsection A shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of a local government agency or an employee or representative of any other public agency and is appearing or communicating on behalf of that agency.
- C. The following definitions shall apply for purposes of Sections 3.0 and 4.0 only:
  - 1. "Administrative action" means the proposal, drafting, development, consideration, amendment, enactment, or defeat by the Hospital Authority of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.
  - 2. "Legislative action" means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the Board of Governors or by any committee or subcommittee thereof, or by a member of the Board of Governors acting in his or her official capacity.
  - 3. "Person" shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.
- D. This Section and Section 4.0 are adopted in accordance with Government Code section 87406.3(c).

#### **4.0 POST-EMPLOYMENT RESTRICTIONS REGARDING AID, ADVICE OR COUNSEL**

Employees classified as management, mid-management or confidential, shall not, for a period of one year after leaving that office or employment, for compensation, aid, advise, counsel, consult or assist any other person regarding an appearance or communication which the official or employee would be prohibited from making under Section 3.0.

#### **5.0 CONFLICT OF INTEREST CODE**

- A. The Political Reform Act requires state and local government agencies, which includes the Hospital Authority to adopt and promulgate conflict of interest codes. (Gov. Code, § 81000 et seq.) The Fair Political Practices Commission has adopted a regulation, which contains the terms of a standard conflict of interest code. (Cal. Code Regs., tit. 2, § 18730.) Incorporation by reference of the terms of the regulation along with the designation of employees and the formulation of disclosure categories set forth in the attached Appendix A constitute the adoption and promulgation of the conflict of interest code of the Hospital Authority. The requirements of this conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.
- B. Designated Covered Individuals identified in the attached Appendix A shall file statements of economic interests with the Hospital Authority, who will make the statements available for public inspection and reproduction. (Gov. Code, § 81008.) Upon receipt of the statements of the Chairman and Members of the Board of Governors of the Hospital Authority, the Hospital Authority shall make and retain a copy and forward the original of these statements to the Board of Supervisors of the County of Kern. Statements for all other designated Covered Individuals shall be retained by the Hospital Authority.

C. Government Code Section 87306.5 requires local agencies, which includes the Hospital Authority to submit to their code reviewing body, which, in the case of the Hospital Authority is the Kern County Board of Supervisors, a biennial report identifying changes in its conflict of interest code, or a statement that their code is not in need of amendment. An amendment is required to: (1) include new positions (including consultants) that must be designated; (2) revise the titles of existing positions; (3) deleted titles of positions that have been abolished; (4) deleted positions that manage public investments from the list of designated positions; (5) revise disclosure categories; and (6) other. No amendment is required if the Hospital Authority's code accurately designates all positions that make or participate in the making of governmental decisions; the disclosure categories assigned to those positions accurately require the disclosure of all investments, business positions, interests in real property and sources of income that may foreseeably be affected materially by the decisions made by those designated positions; and the code includes all other provisions required by Government Code Section 87302. Such report shall be submitted no later than October 1 of each even-numbered year. (Gov. Code, § 87306.5(a).) When completed, the report must be mailed to the Clerk of the Board of Supervisors.

**KEY WORDS: conflict of interest**

OWNERSHIP (Committee/Department/Team) ..... Administration	
ORIGINAL .....	
REVIEWED, NO REVISIONS ..... Jun 2020	
REVISED ..... <u>Aug. 2024</u> , Sept. 2022, Dec. 2019, Oct. 2018, Oct. 2016	
APPROVED BY COMMITTEE ..... Kern County Board of Supervisors	
DISTRIBUTION ..... Administrative Manual	
REQUIRES REVIEW ..... June 2024	
<u>September-August 20222024</u>	<u>September-August 20222024</u>
Administrative Signature of Approval      Date	Signature of Approval      Date

## APPENDIX A

### CONFLICT OF INTEREST CODE KERN COUNTY HOSPITAL AUTHORITY DESIGNATED COVERED INDIVIDUALS

Accountant (all)  
Associate Director of Medical Education  
Authority Board Coordinator ~~(contract service)~~  
Chairman and Members of the Board of Governors (appointed by Board of Supervisors)  
Chief Ambulatory and Outreach Officer ~~(contract service)~~ ~~(new position)~~  
Chief Executive Officer ~~(contract service)~~  
Chief Financial Officer ~~(contract service)~~  
Chief Information Officer  
Chief Medical Officer ~~(contract service)~~  
Chief Nursing Officer  
Chief Operating Officer ~~(contract service)~~  
Chief Transformation Officer (new position)  
Clinical Directors (all)  
Consultants \*  
Contracts Compliance Specialist  
Credit Card Holders (all)  
Decision Support Consultant ~~(contract service)~~  
Director, Care Coordination ~~(contract service)~~  
Director, Communications ~~(contract service)~~  
~~Director, Employee and Labor Relations~~  
Director, Human Resources (formerly Director, Employee and Labor Relations)  
~~Director, Finance (contract service)~~  
Director, Outpatient Integration ~~(contract service)~~  
Director, Patient Access ~~(contract service)~~  
Director, Patient Accounting ~~(contract service)~~  
Director, Performance Improvement ~~(contract service)~~  
Director, Pharmacy Programs and Education ~~(formerly Assistant Pharmacy Director)~~  
Director, Pharmacy Services  
Director, Physician Recruitment ~~(contract service)~~  
Director, Population Health ~~(contract service)~~  
Director, Radiology and Imaging Studies (formerly Manager, Radiology)  
Director, Security and Emergency Management ~~(formerly Hospital Security Director)~~  
Director, Whole Person Care ~~(contract service)~~  
EVS Director ~~(contract service)~~  
Fiscal Support Supervisor (assigned to General Accounting or Accounts Payable)  
Fiscal Support Technician (assigned to Materials Management)  
Front End Revenue Cycle Manager – EMR ~~(contract service)~~  
Front End Revenue Cycle Manager – Inpatient and Emergency Department ~~(contract service)~~  
Front End Revenue Cycle Manager – Patient Financial Counseling and Outpatient Clinics ~~(contract service)~~  
Front End Revenue Cycle Manager – Pre-registration and Authorization ~~(contract service)~~  
~~Health Information Services Director~~  
Hospital Counsel  
Hospital Materials Director  
Hospital Materials Manager  
Hospital Payroll Manager ~~(contract service)~~  
Managed Care Consultant (contract service)  
Manager of Reimbursement ~~(contract service)~~

**Manager, Radiology**

Materials Management Operations Manager

Medical Staff Department Chairs (all)

Medical Staff Division Chiefs (all)

Medical Staff Officers (elected officers only)

Patient Access Services Supervisor

Physician Enterprise Manager

Physician Enterprise Consultant ~~(contract service)~~

Revenue Cycle AR Administration Manager ~~(contract service)~~

Revenue Cycle AR Inventory Manager ~~(contract service)~~

Revenue Cycle Systems Support Manager ~~(contract service)~~

Revenue Integrity Manager ~~(contract service)~~

Risk Manager (Non-clinical) (formerly Workers' Compensation and Liability Manager)

Senior Paralegal

Senior Director, Facilities ~~(formerly Health Facilities Director)~~

Senior Director, Finance (formerly Director, Finance)

Senior Director, Health Information Services (formerly Health Information Services Director)

Special Projects Manager ~~(contract service)~~

Therapy Services Manager

Vice President & General Counsel

Vice President, Human Resources ~~(contract service)~~

Vice President, Strategic Development ~~(contract service)~~ ~~(new position)~~


~~Workers' Compensation and Liability Manager~~

\*Consultants shall be included in the list of designated Covered Individuals and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The Chief Executive Officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in the Kern County Hospital Authority Conflict of Interest Code. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as the Conflict of Interest Code.

## DISCLOSURE CATEGORY

Designated Covered Individuals shall report all sources of income, interests in real property, and investments and business positions in business entities.

**KEY WORDS:** ~~conflict of interest~~

	<b>Department: Administration</b>			
	Policy No. ADM-LD-700	Effective Date: August 2024	Review Date: August 2024	Page 1 of 6 (with addendum)
<b>Title: Conflict of Interest</b>				

## POLICY STATEMENT:

It is the policy of Kern County Hospital Authority (“Hospital Authority”) to provide for a process for the disclosure and management of conflicts of interest which may exist for persons with positions of trust and responsibility in the governance and management of the Hospital Authority, and to assure that state law provisions<sup>1</sup> relating to such conflicts are followed. In order to safeguard independent judgment and action in business decisions, each person entrusted with a key position of responsibility in the Hospital Authority has a duty to disclose actual or potential conflicts of interest, to avoid acting out of any actual or apparent conflict of interest which may arise from personal financial interests in entities which may conflict with the Hospital Authority’s best interests. The purposes of this policy are: (i) to preserve the integrity of the decision-making process of the Hospital Authority, (ii) to prevent intentional or inadvertent participation in the decision-making process by persons having an actual or apparent conflict of interest, (iii) to promote compliance with the process by which conflicts of interest are disclosed and managed in accordance with state laws, and (iv) to prevent violations of state conflict of interest laws.

## DEFINITIONS:

- A. “Covered Individual” means those individuals identified in the attached Appendix A.
- B. “Financial interest” means for purposes of this policy a Covered Individual has a “financial interest” in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the employee or an immediate family member or on: (1) any business entity in which the Covered Individual has a direct or indirect investment worth \$2,000 or more; (2) any real property in which the Covered Individual has a direct or indirect interest worth \$2,000 or more; (3) any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$590<sup>2</sup> or more in value provided to, received by or promised to the Covered Individual within 12 months prior to the time when the decision is made; (4) any business or entity in which the Covered Individual is a director, officer, partner, trustee, employee, or holds any position of management; and (5) any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$590 or more in value provided to, received by or promised to the Covered Individual within 12 months prior to the time when the decision is made.
- C. “Immediate family member” means the Covered Individual’s spouse; natural or adoptive parent, child or sibling; stepparent, stepchild, stepbrother or stepsister; father-in-law, mother-in-law, brother-in-law or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

<sup>1</sup> Government Code section 1090; Government Code section 81000 et seq.

<sup>2</sup> California Fair Political Practices Commission gift limit effective **January 1, 2023 - December 31, 2024**.

- D. "Indirect investment or interest" means any investment or interest owned by the spouse or dependent child of the Covered Individual, by an agent on behalf of the Covered Individual, or by a business entity or trust in which the Covered Individual, or Covered Individual's agent, spouse, and dependent children own directly, indirectly, or beneficially a 10% interest or greater.

## **1.0 ACTS CONSTITUTING CONFLICT OF INTEREST**

- A. No Covered Individual shall engage in any employment, activity or enterprise that results in any of the following:
1. Using the prestige or influence of a Hospital Authority office or employment for private gain or advantage, or the private gain or advantage of another;
  2. Using Hospital Authority time, facilities, equipment or supplies for the Covered Individual's private gain or advantage, or the private gain or advantage of another;
  3. Using confidential information acquired by virtue of Hospital Authority office or employment for the Covered Individual's private gain or advantage, or the private gain or advantage of another;
  4. Receiving or accepting money or any other consideration from anyone other than the Hospital Authority for the performance of an act which the Covered Individual would be required or expected to render in the regular course or hours of office or employment or as part of duties as a Covered Individual;
  5. Performance of an act in other than the Covered Individual's capacity knowing that such act may later be subject, directly or indirectly, to the control, inspection, review, audit or enforcement by the Covered Individual or by the Hospital Authority;
  6. Make, participate in making or in any way attempt to use the Covered Individual's position to influence a governmental decision (other than a decision affecting an employee's wages, hours, or working conditions) in which the Covered Individual knows or has reason to know that the Covered Individual has a financial interest; or
  7. Non-Hospital Authority employment or self-employment outside of regular working hours which involves such time demands or services of such a character as to impair effectiveness of Hospital Authority employment.
- B. Any violation of the provisions contained in the aforementioned section shall constitute sufficient grounds for disciplinary action up to and including termination of employment.

## **2.0 EXEMPTION FOR CERTAIN PHYSICIAN SERVICES**

Those physicians rendering professional services to Kern Medical Center or other Hospital Authority businesses under contract authorizing billing for services to non-indigent patients shall not be deemed to be in violation of the provisions of Section 1.0 of this policy in billing for such services so rendered.

## **3.0 POST-EMPLOYMENT RESTRICTIONS REGARDING REPRESENTATION, APPEARANCE OR COMMUNICATION**

- A. Employees classified as management, mid-management or confidential, shall not, for a period of one year after leaving employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to the Hospital Authority or a present member of the Board of Governors or any officer or employee of the Hospital Authority if the appearance or communication is made for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.



- B. Subsection A shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of a local government agency or an employee or representative of any other public agency and is appearing or communicating on behalf of that agency.
- C. The following definitions shall apply for purposes of Sections 3.0 and 4.0 only:
  - 1. "Administrative action" means the proposal, drafting, development, consideration, amendment, enactment, or defeat by the Hospital Authority of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.
  - 2. "Legislative action" means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the Board of Governors or by any committee or subcommittee thereof, or by a member of the Board of Governors acting in his or her official capacity.
  - 3. "Person" shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.
- D. This Section and Section 4.0 are adopted in accordance with Government Code section 87406.3(c).

#### **4.0 POST-EMPLOYMENT RESTRICTIONS REGARDING AID, ADVICE OR COUNSEL**

Employees classified as management, mid-management or confidential, shall not, for a period of one year after leaving that office or employment, for compensation, aid, advise, counsel, consult or assist any other person regarding an appearance or communication which the official or employee would be prohibited from making under Section 3.0.

#### **5.0 CONFLICT OF INTEREST CODE**

- A. The Political Reform Act requires state and local government agencies, which includes the Hospital Authority to adopt and promulgate conflict of interest codes. (Gov. Code, § 81000 et seq.) The Fair Political Practices Commission has adopted a regulation, which contains the terms of a standard conflict of interest code. (Cal. Code Regs., tit. 2, § 18730.) Incorporation by reference of the terms of the regulation along with the designation of employees and the formulation of disclosure categories set forth in the attached Appendix A constitute the adoption and promulgation of the conflict of interest code of the Hospital Authority. The requirements of this conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.
- B. Designated Covered Individuals identified in the attached Appendix A shall file statements of economic interests with the Hospital Authority, who will make the statements available for public inspection and reproduction. (Gov. Code, § 81008.) Upon receipt of the statements of the Chairman and Members of the Board of Governors of the Hospital Authority, the Hospital Authority shall make and retain a copy and forward the original of these statements to the Board of Supervisors of the County of Kern. Statements for all other designated Covered Individuals shall be retained by the Hospital Authority.

C. Government Code Section 87306.5 requires local agencies, which includes the Hospital Authority to submit to their code reviewing body, which, in the case of the Hospital Authority is the Kern County Board of Supervisors, a biennial report identifying changes in its conflict of interest code, or a statement that their code is not in need of amendment. An amendment is required to: (1) include new positions (including consultants) that must be designated; (2) revise the titles of existing positions; (3) deleted titles of positions that have been abolished; (4) deleted positions that manage public investments from the list of designated positions; (5) revise disclosure categories; and (6) other. No amendment is required if the Hospital Authority's code accurately designates all positions that make or participate in the making of governmental decisions; the disclosure categories assigned to those positions accurately require the disclosure of all investments, business positions, interests in real property and sources of income that may foreseeably be affected materially by the decisions made by those designated positions; and the code includes all other provisions required by Government Code Section 87302. Such report shall be submitted no later than October 1 of each even-numbered year. (Gov. Code, § 87306.5(a).) When completed, the report must be mailed to the Clerk of the Board of Supervisors.

**KEY WORDS:** conflict of interest

OWNERSHIP (Committee/Department/Team) ..... Administration	
ORIGINAL.....	
REVIEWED, NO REVISIONS..... Jun 2020	
REVISED ..... Aug. 2024, Sept. 2022, Dec. 2019, Oct. 2018, Oct. 2016	
APPROVED BY COMMITTEE..... Kern County Board of Supervisors	
DISTRIBUTION..... Administrative Manual	
REQUIRES REVIEW ..... June 2024	
August 2024	August 2024
Administrative Signature of Approval Date	Signature of Approval Date

## **APPENDIX A**

### **CONFLICT OF INTEREST CODE KERN COUNTY HOSPITAL AUTHORITY DESIGNATED COVERED INDIVIDUALS**

Accountant (all)  
Associate Director of Medical Education  
Authority Board Coordinator  
Chairman and Members of the Board of Governors (appointed by Board of Supervisors)  
Chief Ambulatory and Outreach Officer  
Chief Executive Officer  
Chief Financial Officer  
Chief Information Officer  
Chief Medical Officer  
Chief Nursing Officer  
Chief Operating Officer  
Chief Transformation Officer (new position)  
Clinical Directors (all)  
Consultants \*  
Contracts Compliance Specialist  
Credit Card Holders (all)  
Decision Support Consultant  
Director, Care Coordination  
Director, Communications  
Director, Human Resources (formerly Director, Employee and Labor Relations)  
Director, Outpatient Integration  
Director, Patient Access  
Director, Patient Accounting  
Director, Performance Improvement  
Director, Pharmacy Programs and Education  
Director, Pharmacy Services  
Director, Physician Recruitment  
Director, Population Health  
Director, Radiology and Imaging Studies (formerly Manager, Radiology)  
Director, Security and Emergency Management  
Director, Whole Person Care  
EVS Director  
Fiscal Support Supervisor (assigned to General Accounting or Accounts Payable)  
Fiscal Support Technician (assigned to Materials Management)  
Front End Revenue Cycle Manager – EMR  
Front End Revenue Cycle Manager – Inpatient and Emergency Department  
Front End Revenue Cycle Manager – Patient Financial Counseling and Outpatient Clinics  
Front End Revenue Cycle Manager – Pre-registration and Authorization  
Hospital Counsel  
Hospital Materials Director  
Hospital Materials Manager  
Hospital Payroll Manager  
Managed Care Consultant (contract service)  
Manager of Reimbursement  
Materials Management Operations Manager  
Medical Staff Department Chairs (all)  
Medical Staff Division Chiefs (all)  
Medical Staff Officers (elected officers only)

Patient Access Services Supervisor  
Physician Enterprise Manager  
Physician Enterprise Consultant  
Revenue Cycle AR Administration Manager  
Revenue Cycle AR Inventory Manager  
Revenue Cycle Systems Support Manager  
Revenue Integrity Manager  
Risk Manager (Non-clinical) (formerly Workers' Compensation and Liability Manager)  
Senior Paralegal  
Senior Director, Facilities  
Senior Director, Finance (formerly Director, Finance)  
Senior Director, Health Information Services (formerly Health Information Services Director)  
Special Projects Manager  
Therapy Services Manager  
Vice President & General Counsel  
Vice President, Human Resources  
Vice President, Strategic Development

\*Consultants shall be included in the list of designated Covered Individuals and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The Chief Executive Officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in the Kern County Hospital Authority Conflict of Interest Code. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as the Conflict of Interest Code.

### **DISCLOSURE CATEGORY**

Designated Covered Individuals shall report all sources of income, interests in real property, and investments and business positions in business entities.



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

August 21, 2024

**Subject:** Proposed Retroactive Side Letter of Agreement to Memorandum of Understanding 089-2022 with Service Employees International Union, Local 521

**Recommended Action:** Approve; Authorize Chairman to sign; Authorize Human Resources staff to implement changes

**Summary:**

Kern Medical requests your Board retroactively approve the attached Side Letter of Agreement with SEIU Local 521. This Side Letter will confirm the agreement between the Authority and SEIU regarding premium pay for nurses working in the labor and delivery unit of the hospital who have special training and experience in providing care for high-risk deliveries.

As background, for several years, nurses have been receiving “charge pay” when they are assigned as the nurse who will handle high-risk deliveries during a given shift. Charge pay is paid to a nurse who is designated as the unit nurse in “charge” during a shift. Charge pay is paid as an additional \$3.00 per hour for the entire shift in which a nurse is assigned charge duties. Similarly, nurses designated to be responsible for high-risk deliveries have received \$3.00 per hour for that shift. The parties agreed to create a new pay code that was descriptive of the designation of high-risk delivery nurse as opposed to utilizing the charge pay code, which does not differentiate between the charge nurse and the high-risk delivery nurse.

The Authority and SEIU met and conferred in good faith regarding this pay and have agreed to provide retroactive pay for those nurses designated for high-risk deliveries from January 1, 2024 through July 26, 2024. The parties also agreed that, effective July 27, 2024, the beginning of a new pay period, premium pay for nurses designated to handle high-risk deliveries during a shift would be paid at the rate of an additional \$2.00 per hour.

This Side Letter was originally placed on your Board’s agenda for the July 17, 2024 meeting. However, on July 11, 2024, SEIU notified the Authority via text message that, “since this is an amendment addition to our MOU per the language, Per our by laws we are posting notice of election 3-5 days and then the voting period. It’s as fast as we are allowed to go.”

On Monday, July 15, 2024, the Authority reached out to SEIU for an update and the response from SEIU stated “the vote will conclude Friday morning,” On Friday July 19, 2024, SEIU confirmed that the Side Letter had been “ratified and accepted” by the employees.

This Side Letter does not modify, alter, or nullify any other provisions contained in the current MOU.

Members, Board of Governors

August 21, 2024

Page 2 of 2

Therefore, it is recommended that your Board retroactively approve the Side Letter of Agreement to Memorandum of Understanding 089-2022 with Service Employees International Union, Local 521, amending Article VI, Section 6, adding premium pay for registered nurses who are assigned the role of high-risk delivery nurse, effective July 17, 2024, authorize the Chairman to sign, and authorize Human Resources staff to implement changes.

**SIDE LETTER OF AGREEMENT  
BETWEEN  
KERN COUNTY HOSPITAL AUTHORITY  
AND  
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521**

This Side Letter of Agreement (“Agreement”) between Kern County Hospital Authority (“Authority”), a local unit of government, which owns and operates Kern Medical Center, and Service Employees International Union, Local 521 (“SEIU”), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, with respect to the following:

WHEREAS, the parties have previously entered into a Memorandum of Understanding (“MOU”) regarding the wages, hours, and other terms and conditions of employment of the classifications within bargaining units 1 through 6, as more particularly set forth in Section 2 of the MOU, for the period August 1, 2022 through July 31, 2025; and

WHEREAS, registered nurses who are officially assigned the role of “Charge” on any given shift or any position receive premium pay in addition to their regular rate for every hour worked during that shift of \$3.00 per hour; and

WHEREAS, prior to January 1, 2024, registered nurses who are assigned the role of high-risk delivery nurse received premium pay in addition to their regular rate for every hour worked during that shift of \$3.00 per hour using the charge pay code; and

WHEREAS, on January 1, 2024, premium pay for registered nurses who are assigned the role of high-risk delivery nurse was discontinued; and

WHEREAS, on June 10, 2024, and July 1, 2024, after negotiating in good faith, the parties agreed to (i) create a new pay code for high-risk delivery nurse, (ii) provide retroactive premium pay of \$3.00 per hour for registered nurses who are assigned the role of high-risk delivery nurse for the period January 1, 2024 through July 26, 2024, and (iii) provide premium pay of \$2.00 per hour for registered nurses who are assigned the role of high-risk delivery nurse, effective July 27, 2024, and continuing through the term of the MOU; and

WHEREAS the parties acknowledge and agree that, based on past practice, (i) Clinical Nurses Leaders have not been and will not be eligible to receive premium pay if they are assigned the role of high-risk delivery nurse, and (ii) registered nurses who are assigned the dual role of charge nurse and high-risk delivery nurse during a shift will receive premium pay in an amount not to exceed \$3.00 per hour; and

WHEREAS, the parties agree this Agreement is effective July 17, 2024;



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

1. Article V, Section 6, paragraph E, shall be made part of the MOU as follows:

“E. Registered Nurses who are officially assigned the role of “high-risk delivery nurse” shall receive a premium pay in addition to their regular rate of every hour worked during that shift as follows:

- retroactive premium pay of \$3.00 per hour for the period January 1, 2024 through July 26, 2024
- premium pay of \$2.00 per hour, effective July 27, 2024, and continuing through the term of this MOU
- premium pay of \$3.00 per hour for Registered Nurses assigned the dual role of charge nurse and high-risk delivery nurse

Clinical Nurses Leaders are not eligible to receive premium pay if they are assigned the role of high-risk delivery nurse.”

2. Following execution of this Agreement, the Authority will create a new pay code for high-risk delivery nurse premium pay.

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

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

5. This Agreement may be amended only by mutual, written consent of duly authorized representatives of the parties.

6. In the event of any inconsistency between the provisions of this Agreement and any provision of the MOU, the terms of this Agreement shall govern and control.

7. Following the execution of this Agreement, the Authority will append this Agreement to the published MOU.

[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.

Service Employees International Union, Local 521

By \_\_\_\_\_  
Yvonne Davila  
Director, Region 5

Kern County Hospital Authority

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority



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

August 21, 2024

**Subject:** Proposed Amendment No. 5 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., for professional medical services in the Department of Anesthesiology

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

**Summary:**

Kern Medical requests your Board approve Amendment No. 5 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., an independent contractor, for professional medical services in the Department of Anesthesiology. The group has provided comprehensive anesthesia services at Kern Medical since November 9, 2016.

The proposed Amendment provides for an hourly rate to be applied in the amounts of \$195 per hour for CRNA coverage and \$280 per hour for physician coverage. This adjustment allows for additional operating rooms to be functional as needed during higher scheduled OR volume times. The addition of per diem coverage increases the maximum payable by \$300,000, from \$24,504,801 to \$24,804,801, to cover the remaining term.

Therefore, it is recommended that your Board approve Amendment No. 5 to Agreement 2016-066 with Regional Anesthesia Associates, Inc., for professional medical services in the Department of Anesthesiology for the period November 9, 2016 through November 8, 2025, increasing the maximum payable by \$300,000, from \$24,504,801 to \$24,804,801 to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 5  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – Regional Anesthesia Associates, Inc.)**

This Amendment No. 5 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Regional Anesthesia Associates, Inc., a California professional medical corporation (“Contractor”), with its principal place of business located at 7370 N. Palm Avenue, Suite 102, Fresno, California 93711. Authority and Contractor are sometimes referred to herein, individually, as a “Party” and collectively, as the “Parties.”

**RECITALS**

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #2016-066, dated August 17, 2016), Amendment No. 1 (Agt. 2016-070, dated October 19, 2016), Amendment No. 2 (Agt. #053-2019, dated September 18, 2019), Amendment No. 3 (Agt. #118-2022, dated October 19, 2022), and Amendment No. 4 (Agt. #014-2024, dated January 17, 2024) (collectively, the “Agreement”), for the period November 9, 2016 through November 8, 2025, for professional medical services in the Department of Anesthesiology at KMC; and

(b) 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

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

(d) The Agreement is amended effective August 21, 2024;

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 4, Payment for Services, paragraph 4.6, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“4.6 Maximum Payable. The maximum payable under this Agreement will not exceed \$24,804,801 for the period November 9, 2022 through November 8, 2025.”

2. Amendment No. 3 to Exhibit “C,” Fee Schedule - Additional Compensation, shall be deleted in its entirety and replaced with Amendment No. 4 to Exhibit “C,” Fee Schedule - Additional Compensation, attached hereto and incorporated herein by this reference.

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. 5  
as of the day and year first written above.

REGIONAL ANESTHESIA ASSOCIATES, INC.

By \_\_\_\_\_  
Oji A. Oji, M.D.  
Its President

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

**AMENDMENT NO. 4  
TO  
EXHIBIT “C”  
Fee Schedule  
Additional Compensation  
Regional Anesthesia Associates, Inc.  
(Effective August 21, 2024 – November 8, 2025)**

As consideration for any additional services provided by Contractor hereunder, Authority will pay Contractor in accordance with the fee schedule set forth below, as follows:

<b>Additional Service</b>	<b>Hourly Rate</b>
CRNA – OR coverage	\$195
MD – OR coverage	\$280
MD – Dedicated OR trauma	\$270
CRNA – Dedicated OR	\$195
CRNA – Dedicated OB	\$195
CRNA – Per diem coverage	\$195
MD – Per diem coverage	\$280
Medical Director Services	\$225

Payment will be made in accordance with paragraph 4.5 of the Agreement. All services are payable in arrears.

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

August 21, 2024

**Subject:** Proposed Amendment No. 3 to Agreement 055-2019 with United Neuroscience, Inc.

**Recommended Action:** Approve, Authorize the Chairman to sign

**Summary:**

Kern Medical requests your Board approve the proposed Amendment No. 3 to Agreement 055-2019 with United Neuroscience, Inc., an independent contractor, for professional medical services in the Department of Medicine. The group has provided neurology, neuro-interventional radiology and telemedicine services at Kern Medical since 2015, with seizure and epilepsy monitoring coverage added in 2019 to the list of services. The services provide by United Neuroscience are a vital component of Kern Medical's stroke program and epilepsy monitoring service.

The proposed Amendment extends the term of the Agreement for three years from October 1, 2019 through September 30, 2027, increases the maximum payable by \$3,710,000, from \$5,290,000, to \$9,000,000 to cover the extended term. The proposed Amendment updates the list of designated group physicians.

Therefore, it is recommended that your Board approve Amendment No. 3 to Agreement 055-2019 with United Neuroscience, Inc., for professional medical services in the Department of Medicine for the period October 1, 2019 through September 30, 2024, extending the term for three years from October 1, 2024, through September 30, 2027, increasing the maximum payable by \$3,710,000, from \$5,290,000 to \$9,000,000, to cover the extended term, and authorize the Chairman to sign.



**AMENDMENT NO. 3  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – United Neuroscience, Inc.)**

This Amendment No. 3 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and United Neuroscience, Inc., a California professional medical corporation (“Contractor”), with its principal place of business located at 3838 San Dimas Street, Suite A-250, Bakersfield, California 93301.

**RECITALS**

(a) Authority and Contractor have heretofore entered into an Agreement for Professional Services (Agt. #055-2019, dated September 18, 2019) Amendment No. 1 (Agt. #054-2021, dated September 15, 2021) and Amendment No. 2 (Agt. #105-2022, dated September 21, 2022) (collectively, “Agreement”), for the period October 1, 2019 through September 30, 2024, for professional medical services in the Department of Medicine 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 October 1, 2024;

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 October 1, 2019 (the “Effective Date”), and shall end September 30, 2027, 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 \$9,000,000 over the eight (8) year term of this Agreement.”

3. Exhibit “B,” Designated Group Physicians, shall be deleted in its entirety and replaced with Amendment No. 1 to Exhibit “B,” Designated Group Physicians, 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 and all amendments hereto shall remain in full force and effect.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 3  
as of the day and year first written above.

UNITED NEUROSCIENCE, INC.

By \_\_\_\_\_  
Kiron Thomas, M.D.  
Its President

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

Amend3.United Neuroscience.072524

**AMENDMENT NO. 1  
TO  
EXHIBIT “B”  
DESIGNATED GROUP PHYSICIANS**

**Name**

Kiron Thomas, M.D.  
Hari Prasad Hunhi Veedu, M.D.  
Venkata Dandamudi, M.D.  
Patricia Fernandez, M.D.  
Laura Ragna, M.D.  
Nicholas Tarlov, M.D.

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

August 21, 2024

**Subject:** Proposed Agreement with Katayoun Sabetian, M.D., Inc., for professional medical services in the Department of Medicine

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

**Summary:**

Kern Medical requests your Board approve an Agreement with Katayoun Sabetian, M.D., an independent contractor, for professional medical services in the Department of Medicine, for a term of three years, from September 1, 2024 through August 31, 2027 in an amount not to exceed \$1,200,000. Dr. Sabetian is a board-certified neurologist and has been providing services to Kern Medical patients since 1998.

Dr. Sabetian's compensation will be based on the following: an hourly rate of \$150 per hour for services as Medical Director of the stroke program, not to exceed 40 hours per month; neurology coverage including a fixed fee of \$500 for each clinic attended, a per diem rate of \$350 per day for neurology rounds and consultations, a per diem rate of \$75 for weekday night call coverage, and a fixed fee of \$300 for weekend call coverage.; Medi-Cal rates based on the fee schedule set forth in Exhibit "B" for each nerve conduction study and electromyogram; \$100 per hour, not to exceed 16 hours per month, for services as Medical Student Clerkship Director for neurology services; and a fixed fee of \$300 per didactic lecture. The maximum payable under the Agreement will not exceed \$1,200,000 over the three-year term.

Therefore, it is recommended that your Board approve the Agreement with Katayoun Sabetian, M.D., Inc., for professional medical services in the Department of Medicine from September 1, 2024 through August 31, 2027, in an amount not to exceed \$1,200,000, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – Katayoun Sabetian, M.D., Inc.)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, between Kern County Hospital Authority, a public entity that is a local unit of government (“Authority”), and Katayoun Sabetian, M.D., Inc., a California professional medical corporation (“Contractor”), with offices located at 2323 16th Street, Suite 206, Bakersfield, California 93301.

**I.  
RECITALS**

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

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

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

(d) KMC has developed a stroke program that meets the accreditation standards of The Joint Commission for certification as a Primary Stroke Center; and

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

(f) Contractor is specially trained, experienced, expert, and competent to perform such services;

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** This Agreement shall be effective and the term shall commence as of September 1, 2024 (the “Effective Date”), and shall end August 31, 2027, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

## 2. Obligations of Contractor.

2.1 Specified Services. Contractor shall render those services set forth in Exhibit "A," attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

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

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

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

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

### 2.6 Qualifications of Group Physicians.

2.6.1 Licensure/Board Certification. Group Physicians shall at all times during the term of this Agreement be duly licensed physicians and surgeons in the state of California, practicing in the medical specialty of neurology, and certified by the American Board of Psychiatry and Neurology in neurology-general and maintain such certification at all time during the term of this Agreement.

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

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

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

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

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

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

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

2.11 Quality Improvement and Risk Management. Group Physicians shall participate in (i) the quality improvement and risk management programs of KMC and serve on such



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

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

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

### 3. Obligations of Authority.

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

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

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

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

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

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

#### 4. Payment for Services.

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

4.1.1 Medical Director Services. Contractor shall be paid an hourly rate of \$150 per hour not to exceed 40 hours per month for services as Medical Director of the stroke program.

4.1.2 Neurology Coverage. Contractor shall be compensated as follows for neurology coverage: (i) Contractor shall be paid a fixed fee of \$500 for each neurology clinic attended; (ii) Contractor shall be paid a per diem rate of \$350 per day for neurology rounds and consultations; (iii) Contractor shall be paid a per diem rate of \$75 for weekday night call coverage (Monday through Thursday, 5:00 p.m. to 8:00 a.m.); and (iv) Contractor shall be paid a fixed fee of \$300 for weekend call coverage (Friday, 5:00 p.m. to Monday, 8:00 a.m.).

4.1.3 Procedures. Authority shall pay Contractor for each adult nerve conduction study ("NCS") and electromyogram ("EMG") interpreted by Contractor in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated herein by this reference.

4.1.4 Clerkship Director Stipend. Authority shall pay Contractor an hourly rate of \$100 per hour not to exceed sixteen (16) hours per month for services as Medical Student Clerkship Director for neurology services.

4.1.5 Didactic Lectures. Contractor shall be paid a fixed fee of \$300 per lecture, which includes preparation time and lecture presentation.

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

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

4.2 Maximum Payable. The maximum payable under this Agreement shall not exceed \$1,200,000 over the three (3) year term of this Agreement.

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

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

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

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

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

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

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

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

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

9. **Authority to Incur Financial Obligation.** It is understood that neither Contractor nor Group Physicians, in the performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.
10. **Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
11. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, this Agreement shall automatically terminate at the end of such thirty (30) day period.
12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.
13. **Compliance with Law.** Contractor shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.
14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of its duties described herein that it shall act, and cause its employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and its employees shall participate in compliance training and education as reasonably requested by KMC.
15. **Confidentiality.**
- 15.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written

notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

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

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

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

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

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

16. Conflict of Interest. Contractor covenants that it has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state

law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.

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

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

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

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

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

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

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

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

25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.

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

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



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

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

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

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

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

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

Notice to Contractor:

Katayoun Sabetian, M.D., Inc.  
2323 16th Street, Suite 206  
Bakersfield, California 93301  
Attn.: Its President

Notice to Authority:

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

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

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

36. **Termination.**

36.1 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon ninety (90) days' prior written notice to the other party.

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

- A) Breach of this Agreement by Contractor where such breach is not cured within thirty (30) calendar days after Authority gives written notice of such breach to Contractor;
- B) Authority ceases operations;
- C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
- D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;
- E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;
- F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
- G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;

- H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;
- I) Violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject;
- J) Contractor makes an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC;
- K) Commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or
- L) The loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

37. **Effect of Termination.**

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

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

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

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

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

KATAYOUN SABETIAN, M.D., INC.

By \_\_\_\_\_  
Katayoun Sabetian, M.D.  
Its President

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

Agreement.Sabetian.080224

**EXHIBIT “A**  
**DESCRIPTION OF SERVICES**  
**Katayoun Sabetian, M.D., Inc.**

**Position Summary:**

1. Reports to Chair, Department of Medicine.
2. Serves as Medical Director of the stroke program.
3. Serves as a provider of neurology services.
4. Serves as Medical Student Clerkship Director for neurology services.

**Clinical Responsibilities:**

1. Provide neurology clinic coverage, rounds and consultations (excluding two Thursdays per month when Contractor is available for phone consultations only).
2. Provide interpretation of adult nerve conduction studies and electromyograms.
3. Provide supervision of residents, medical students and mid-level practitioners.
4. Provide electronic or telephonic consultation on an as-needed basis for problem cases.

**Teaching Responsibilities:**

1. Provide bedside teaching of residents and medical students.
2. Provide didactic lectures three times per year, one hour each lecture, on clinic day.

**Medical Director Responsibilities:**

1. Work collaboratively with the stroke program Coordinator and other medical and clinical staff to maintain disease-specific accreditation as a primary stroke center through The Joint Commission.
2. Provide leadership and clinical oversight of the stroke program.
3. Provide leadership and support for the education and training of the medical and clinical staff involved in stroke care.
4. Provide leadership and support in the development of written care protocols and obtain approval of such protocols through appropriate KMC medical staff committees.
5. Provide oversight to coordinate performance improvement activities.
6. Lead and participate in multidisciplinary stroke committee meetings.
7. Participate in and support KMC academic programs that relate to stroke program teaching and research.
8. Participate in a leadership role at KMC and in the community.
9. Work to ensure excellent care through chart review, direct observation, and data analysis.

**Medical Student Clerkship Director Responsibilities:**

1. Coordinate activities in conjunction with the Department of Medicine Medical Student Clerkship Director and Designated Institutional Official.
2. Prepare and maintain syllabi/curricula including clerkship instructional materials, key contacts of faculty, residents, and coordinators, and rotation and call schedules.

3. Conduct faculty, resident, and medical student development.
4. Ensure an educational environment conducive to student experience, which includes, without limitation the following: student understanding of responsibilities and clerkship objectives; duty hour policy; meaningful and supervised patient care that meets criteria for patients' conditions and numbers; monitoring students' use of Patient Log; providing for direct observation of at least one History and Physical by a faculty member; providing ongoing faculty and resident feedback to students about clinical service; and appropriately advocating for students.
5. Ensure didactic lectures and case sessions for students occur; review and observe lectures for quality and consistency, including student evaluations.
6. Complete formative micro assessments of student performance when requested by the medical students.
7. Provide mid-clerkship formative evaluations of student performance.
8. Complete summative evaluations of student performance within 30 days of the conclusion of each clerkship.
9. Participate in faculty development as offered by KMC and David Geffen School of Medicine at UCLA.

[INTENTIONALLY LEFT BLANK]

**EXHIBIT “B”  
FEE SCHEDULE**

**[TO BE ATTACHED]**



# Medi-Cal Rates for EMG/NCS

## NCS

CPT Code	Number of Units	Rate
95907	1-2	82.81
95908	3-4	102.19
95909	5-6	122.34
95910	7-8	160.95
95911	9-10	194.55
95912	11-12	227.53
95913	13	263.45

## EMG (with NCS)

CPT Code	Rate
95886	76.84

## Repetitive Stimulation

CPT Code	Rate
95937	27.18

**EXHIBIT “C”**

**IRS FORM W-9**

**[TO BE ATTACHED]**

## **EXHIBIT "D"**

### **INSURANCE**

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

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

3. Automobile Liability Insurance:

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

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

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

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

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

7. Documentation:

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

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

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

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

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

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

August 21, 2024

**Subject:** Proposed Agreement with Antonio L. Garcia, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology

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

**Summary:**

Kern Medical requests your Board approve an Agreement with Antonio L. Garcia, M.D., for professional medical and administrative services as in the Department of Obstetrics and Gynecology. Dr. Garcia, who is board certified in obstetrics and gynecology, has been employed by Kern Medical since 1988. Dr. Garcia serves as the Vice Chair of Operations and 4th Year Medical Student Clerkship Director for the Department.

Dr. Garcia's annual salary of \$300,000 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents fair market value compensation for the services provided. Dr. Garcia's compensation is comprised of (i) a base salary for teaching and administrative duties, and (ii) payment for care of KMC patients. He is required to maintain a median level (50th percentile) of worked relative value units in order to sustain the annual salary amount. Dr. Garcia will receive a starting bonus of \$27,500 and is eligible to receive an annual retention bonus of \$20,000, and additional compensation as outlined in the Agreement for call coverage. Dr. Garcia will continue to receive the same benefits offered all employed physicians to include eligibility to participate in the physicians' pension plan, health benefits, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical. The maximum payable under the Agreement will not exceed \$1,650,700 over the three-year term, excluding the cost of benefits.

Therefore, it is recommended that your Board approve the Agreement with Antonio L. Garcia, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology from October 1, 2024 through September 30, 2027, in an amount not to exceed \$1,650,700, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Antonio L. Garcia, M.D.)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Antonio L. Garcia, M.D. (“Physician”).

**I.  
RECITALS**

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

(b) Authority requires the assistance of Physician to provide professional medical and administrative services in the Department of Obstetrics and Gynecology 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 is specially trained, experienced, expert, and competent to perform such services; and

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical and administrative services in the Department and teaching services to resident physicians employed by Authority (Agt. #56222, dated September 20, 2022), for the period July 1, 2022 through September 30, 2024; and

(e) Each party expressly understands and agrees that Agt. #56222 is superseded by this Agreement as of the Commencement Date;

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of three (3) years, commencing as of October 1, 2024 (the “Commencement Date”), and shall end September 30, 2027 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.



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

3. **Representations and Warranties.** Physician represents and warrants to Authority and KMC, upon execution and throughout the Term of this Agreement, as follows: (i) Physician is not bound by any agreement or arrangement which would preclude Physician from entering into, or from fully performing the services required under this Agreement; (ii) Physician’s license to practice medicine in the state of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to the terms of probation or other restriction; (iii) Physician’s medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction; (iv) Physician holds a valid Controlled Substance Registration Certificate issued by the Drug Enforcement Administration that has never been revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (v) Physician is not currently and has never been an Ineligible Person<sup>1</sup>; (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.

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<sup>1</sup> 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 Obstetrics and Gynecology in obstetrics and gynecology-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 eighty (80) hours per biweekly pay period, and will be compensated with cash and other value as described below in this paragraph 5.1 ("Annual Salary").

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$11,538.46 biweekly not to exceed \$300,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

5.1.2 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 Call Coverage. Authority shall pay Physician for call coverage at KMC as follows: (i) Physician shall be paid a per diem in the amount of \$3,600 per twenty-four (24) hour day for weekend and holiday call coverage assigned (Saturday and Sunday; designated Authority holidays only); (ii) Physician shall be paid a fixed fee in the amount of \$1,800 for every weekday night of call coverage assigned (Monday through Friday); and (iii) Physician shall be paid a fixed fee in the amount of \$500 for backup coverage if called to come to the hospital. All

payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.3 Excess Clinic Coverage (KMC and Non-KMC Local Practice Sites). Authority shall pay Physician an hourly rate of \$150 per hour, less all applicable federal and state taxes and withholdings, for excess clinic coverage (defined as scheduled appointments at KMC-designated local Practice Sites within a twenty-five (25) mile radius of 1700 Mount Vernon Avenue, Bakersfield, California 93306 on weekends, after 5:00 p.m. on weekdays, or clinics in excess of three (3) half-day clinics per week).

5.4 Excess Clinic Coverage at Rural Practice Sites. Authority shall pay Physician an hourly rate of \$200 per hour, less all applicable federal and state taxes and withholdings, for clinic coverage in excess of three (3) half-day clinics per week at KMC-designated rural Practice Sites that are located beyond a twenty-five (25) mile radius of 1700 Mount Vernon Avenue, Bakersfield, California 93306.

5.5 Rural Clinic Stipend. Physician is eligible to receive a stipend at the hourly rate of \$50 per hour, less all applicable federal and state taxes and withholdings, for scheduled weekday, Monday through Friday, clinic coverage at KMC-designated rural Practice Sites if such coverage is provided within the required three (3) half-day clinics per week.

5.6 Mileage Reimbursement. Authority shall reimburse Physician, on a per mile basis, for personal vehicle use at the current privately-owned vehicle (POV) mileage reimbursement rate established by the U.S. General Services Administration, when using his private vehicle to conduct hospital business within the geographic area, defined as the County of Kern, for mileage that is greater than or equal to twenty-five (25) miles in a single day.

5.7 Clerkship Director Stipend. Authority shall pay Physician an annual stipend of \$923.07 biweekly, less all applicable federal and state taxes and withholdings, not to exceed \$24,000 annually for services as 4th Year Medical Student Clerkship Director for the Department. Physician understands and agrees that he must remain in the position of 4th Year Medical Student Clerkship Director as of each biweekly payout date in order to earn and receive the stipend.

5.8 Starting Bonus.

5.8.1 Bonus. Physician shall receive a starting bonus in the amount of \$27,500, less all applicable federal and state taxes and withholdings, payable within ten (10) business days of the Commencement Date. Physician shall forfeit the starting bonus if he fails to report to work on the Commencement Date.

5.8.2 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 \$27,500 multiplied by the fraction, the numerator of which is three hundred sixty-five (365) less the number of days during which Physician was employed by Authority, and the denominator of which

is three hundred sixty-five (365). Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

5.8.3 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.

5.9 Retention Bonus.

5.9.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings, payable within ten (10) days of October 1, 2025, and each October 1 thereafter during the Term if the conditions for Physician to receive the retention bonus are met.

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

5.9.3 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.

5.10 Professional Fee Billing.

5.10.1 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.

5.10.2 Remittance of Professional Fee Charges. Physician shall remit all professional fee charges to KMC within forty-five (45) days of the date direct patient care services are provided by Physician. Any professional fee charges not remitted by Physician to KMC within forty-five (45) days of the date of such service, or any charges

for which relevant documentation has not been provided, will not be credited to Physician as Worked RVU.

5.11 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,650,700 over the three (3) year Initial Term of this Agreement.

6. **Benefits Package.**

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

6.2 Health Care Coverage. Physician shall continue to receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. There is no employee share of cost associated with this benefit, as Physician was first hired by the County of Kern prior to April 15, 1997. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least forty (40) hours per biweekly pay period to be eligible for coverage.

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

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

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

6.6 Education Leave. Physician shall receive eighty (80) hours paid education leave annually. The first eighty (80) hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional eighty (80) hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The 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 Limitation on Benefits. Except as expressly stated herein, Physician shall receive no other benefits from Authority.

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



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

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

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

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

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

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

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

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

16. **[RESERVED].**

17. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or

hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

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

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

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

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

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

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

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

Notice to Physician:

Antonio L. Garcia, M.D.  
5838 Roundup Way  
Bakersfield, California 93306

Notice to Authority:

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or

regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; or (xvi) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

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

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

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

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

PHYSICIAN

By \_\_\_\_\_  
Antonio L. Garcia, M.D.

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

Agreement.Garcia.072624

**EXHIBIT “A”**  
**JOB DESCRIPTION**  
**Antonio L. Garcia, M.D.**

**Position Description:** Reports to Chair, Department of Obstetrics and Gynecology; serves as Vice Chair of Operations for the Department; serves as 4th Year Medical Student Clerkship Director; serves as a full-time faculty member in the Department; provides no fewer than eighty (80) hours per pay period of service.

**Essential Functions:**

1. Clinical Responsibilities

- Supervises residents while on service
- Provides services in the outpatient clinics
- Provides medical, surgical and obstetrical services
- Provides mutually agreed upon weekday and weekend after hours call coverage
- Supervises procedures performed by residents and mid-levels while on service
- Performs therapeutic and diagnostic procedures within the scope of practice for an obstetrician and gynecologist while on service
- Provides mutually agreed upon outpatient services related to non-KMC clinics

2. Medical Education; Academic Responsibilities

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

3. Teaching Responsibilities

- Participates in morning report, morbidity and mortality conference, board review, and Journal Club
- Participates in bedside and clinic teaching of residents and medical students
- Participates in didactic lectures

4. Administrative Responsibilities

- Participates in board reviews and Department quality improvement activities
- Participates in development of Department curriculum
- Performs other duties as assigned by the Department Chair

5. Committee Assignments

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

6. Vice Chair of Operations Responsibilities

- Provides Department leadership as Vice Chair under the supervision of the Department Chair, including mentoring and professional development of all Department physicians, residents, and medical students
- Supervises, monitors and evaluates the quality of care rendered by members of the Department
- In coordination with the Department Chair, leads the clinical preparation monitoring, review, and performance of clinical activity in the Department
- Assists the Department Chair in preparing or delegating staff schedules and clinical assignments to maximize productivity and quality care
- Guides 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
- Leads clinical and administrative integration efforts across the Department including ensuring proper program planning, resource allocation, analysis, communication, and assessment
- Works collaboratively with Department faculty to develop a cohesive and collaborative environment with a focus of enhancing access to patient care for inpatient and outpatient services
- Assists with development of faculty recruitment planning and recruitment activities
- Supports and provides expertise to the Program Director

7. 4th Year Medical Student Clerkship Director Responsibilities

- Coordinates activities in conjunction with the Medical Student Clerkship Director for the Department of Surgery and the Designated Institutional Official
- Prepares and maintains syllabus/curriculum including clerkship instructional materials, key contacts of faculty, residents, and coordinators, and rotation and call schedules
- Conducts faculty, resident, and medical student development
- Ensures an educational environment conducive to student experience, which includes, without limitation the following: student understanding of responsibilities and clerkship objectives; duty hour policy; meaningful and supervised patient care that meets criteria for patient conditions and numbers; monitoring students' use of Patient Log; providing for direct observation of at least one History and Physical by a faculty member; providing ongoing faculty and resident feedback to students about clinical service; and appropriately advocating for students
- Ensures didactic lectures and case sessions for students occur; reviews and observes lectures for quality and consistency, including student evaluations

**Employment Standards:**

Completion of an accredited residency program in obstetrics and gynecology; one (1) year of post-residency experience in obstetrics and gynecology 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 Obstetrics and Gynecology in obstetrics and gynecology-general

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

[INTENTIONALLY LEFT BLANK]

**EXHIBIT “B”**

**AUTHORIZATION TO RELEASE INFORMATION**

**[To Be ATTACHED]**

## **AUTHORIZATION TO RELEASE INFORMATION**

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

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

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

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Physician

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Date



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

August 21, 2024

**Subject:** Proposed Agreement with Frank W. Sabatelli, M.D., a contract employee, for professional medical services in the Department of Radiology

**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, for a term of three years from August 28, 2024 through August 27, 2027 in an amount not to exceed \$2,800,000. Dr. Sabatelli is a board-certified interventional radiologist and has been employed by Kern Medical full time since August 2021.

Dr. Sabatelli's annual salary of \$589,000 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents fair market value compensation for the services provided. Dr. Sabatelli's compensation is comprised of (i) a base salary for teaching and administrative duties, and (ii) payment for care of KMC patients. He is required to maintain a median level (50th percentile) of worked relative value units in order to sustain the annual salary amount. In addition to his annual salary, Dr. Sabatelli is eligible to receive an annual retention bonus of \$20,000 and additional compensation as outlined in the Agreement for weekday and weekend call coverage. Dr. Sabatelli will also receive the same benefits offered all employed physicians to include eligibility to participate in the physicians' pension plan, health benefits, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical. The maximum payable under the Agreement will not exceed \$2,800,000 over the three-year term, excluding the cost of benefits.

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 February August 28, 2024 through August 27, 2027, in an amount not to exceed \$2,800,000, plus applicable benefits, 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 \_\_\_\_\_, 2024, between 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 is specially trained, experienced, expert, and competent to perform such services; and

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians (Agt. #048-2021, dated August 18, 2021), for the period August 28, 2021 through August 27, 2024; and

(e) Physician has met the conditions of paragraph 5.5 as set forth in Agt. #42921, which provides in relevant part that Physician shall be paid an annual retention bonus in the amount of \$10,000, less all applicable federal and state taxes and withholdings; and

(f) Each party expressly understands and agrees that Agt. #048-2021 is superseded by this Agreement as of the Commencement Date, with the exception of the retention bonus set forth in paragraph 5.5 of Agt. #048-2021;

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 as follows:

**II.  
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of three (3) years, commencing as of August 28, 2024 (the “Commencement Date”), and shall end August 27, 2027 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein

stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

2. **Employment.** Authority hereby employs Physician 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 Person<sup>1</sup>; (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.

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<sup>1</sup> 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 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.

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 initial Annual Salary of \$22,653.84 biweekly not to exceed \$589,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients. Physician understands and agrees that (i) the annual salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the term of this Agreement.

5.1.2 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 time<sup>1</sup>; diagnostic imaging only) as follows:

5.2.1 Weekday Coverage. Physician shall be paid a per shift rate in the amount of \$2,300, less all applicable federal and state taxes and withholdings, for every weekday shift (Monday-Friday) that exceeds 16 10-hour shifts per month.

5.2.2 Weekend Coverage. Physician shall be paid a per shift rate in the amount of \$2,500, less all applicable federal and state taxes and withholdings, for every weekend shift (Saturday and Sunday) that exceeds 16 10-hour shifts per month.

5.2.3 Holiday Coverage. Authority shall pay Physician a per diem rate in the amount of \$2,500, less all applicable federal and state taxes and withholdings, per day for holiday coverage (designated Authority holidays only).

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, less all applicable federal and state taxes and withholdings, 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, less all applicable federal and state taxes and withholdings, 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.

5.4 Backup Call Coverage. Authority shall pay Physician a fixed fee in the amount of \$500, less all applicable federal and state taxes and withholdings, for backup call coverage (vascular/interventional radiology only), unless otherwise on service.

5.5 Retention Bonus.

5.5.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings, payable within ten (10) days of August 28, 2025, and each August 28 thereafter during the Term if the conditions for Physician to receive the retention bonus are met.

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 \$20,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

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<sup>1</sup> Nonproductive time is defined to include, without limitation, holidays, education leave, vacation, and sick leave.

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

5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,800,000 over the three (3) year Term of this Agreement.

6. Benefits Package.

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

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

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

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

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

6.6 Education Leave. Physician shall receive eighty (80) hours paid education leave annually. The first eighty (80) hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional eighty (80) hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The 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 Limitation on Benefits. Except as expressly stated herein, Physician shall receive no other benefits from Authority.

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

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

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

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

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

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

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

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

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

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

16. **[RESERVED].**

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

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than 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 thirty (30) days' prior written notice in the event that Authority requires such an action.

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

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

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

Notice to Physician:

Frank W. Sabatelli, M.D.  
10900 Research Boulevard, Suite 16C-87  
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 ninety (90) days' prior written notice to the other party.

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

29. **Effect of Termination.**

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



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

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

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

PHYSICIAN

By: \_\_\_\_\_  
Frank W. Sabatelli, M.D.

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By: \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

Agreement.Sabatelli.071824

**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 ten (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**  
**[To Be Attached]**

## **AUTHORIZATION TO RELEASE INFORMATION**

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

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

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

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Physician

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Date



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

August 21, 2024

**Subject:** Proposed Professional Services Agreement with RS Studio, Inc. to provide design and construction administration for the main campus and clinical spaces

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

**Summary:**

Kern Medical requests your Board approve the proposed Agreement with RS Studio, Inc., in the amount of \$1,000,000, to provide design services for budgeted construction projects at the main campus and clinic space, effective August 21, 2024 through August 20, 2027.

This company is widely respected in the industry for its exceptional expertise in hospital design and compliance with the Department of Health Care Access and Information (HCAI) requirements and codes. Additionally, the company is recognized for its cost-effective fee structure.

Budgeted construction projects for this Fiscal Year include, but are not limited to:

- NICU Medical Air Dryer
- New Mobile MRI
- New Phone System
- D Wing Roof Repairs
- Peer Review New CT Scan
- Nurse Call Various Locations
- Power Investigations at Lab
- SB-1953 Structural Reporting and Investigations

Therefore, it is recommended that your Board approve the Agreement with RS Studio, Inc., in an amount not to exceed \$1,000,000, to provide design and construction administration for various budgeted projects, for the term of August 21, 2024 through August 20, 2027, and authorize chairman to sign.

Date: 7/22/24



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

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

**RECITALS**

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

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

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

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

**AGREEMENT**

1. **Services to be Rendered.** Consultant shall provide the services and products described in **Exhibit A** ("Services").

2. **Compensation to Consultant.** KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.

3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.

4. **Term.** This term of this Agreement ("Term") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.

5. **Assignment.** Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO.

6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall permit KCHA to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as KCHA.

7. **Authority to Bind KCHA.** It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCHA to any agreements or undertakings.

8. **Indemnification.**

a. **General.** Consultant shall defend, indemnify, and hold harmless KCHA and KCHA's board members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives ("KCHA Indemnified Parties") from any losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs (including attorneys' fees of in-

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **EXHIBIT A SERVICES**

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

### **1. Full description of Services:**

#### **1.1 GENERAL SERVICES OF CONSULTANT**

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

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

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

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

#### **1.2 DESIGN SERVICES OF CONSULTANT**

##### **A. Schematic Design Phase:**

Consultant shall consult with KCHA to ascertain project requirements.

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

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

##### **B. Design Development Phase:**

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

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

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

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

C. Construction Document Phase:

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

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

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

D. Construction Phase:

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

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

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

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

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

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

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

### **1.3 ADDITIONAL SERVICES OF THE CONSULTANT**

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

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

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

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

C. Services for repair of damage to the Project.

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

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

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

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

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

#### **By Responsible KCHA Department:**

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

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

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

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

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

F. KCHA shall provide bid and contract administration services.

G. KCHA shall furnish continuous inspection services.



H. KCHA shall furnish copies of existing information.

By Consultant:

N/A

**EXHIBIT A-1**  
**IRS FORM W-9**

**EXHIBIT B**  
**FEE SCHEDULE**

## EXHIBIT "C"

### INSURANCE

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

3. Automobile Liability Insurance:

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

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

[Intentionally left blank]

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

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

**I. COMPLIANCE WITH LABOR STANDARDS**

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

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

**II. APPRENTICESHIP PROGRAM**

**1. Compliance Required**

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

**2. Certification of Approval**

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

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

**3. Fund Contributions**

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

**4. Apprenticeship Standards**

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

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

**1. INSURANCE**

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

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

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

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

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

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

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

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

## 2. INDEMNIFICATION

A. In addition to the Indemnification requirements in the Agreement, KCHA and each of its officers, employees, consultants and agents including, but not limited to, its Board, Project Manager and any Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

B. To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, KCHA in accordance with the Agreement and with respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against KCHA and each of its officers, employees, consultants and agents including, but not limited to KCHA, the Board, Project Manager and any Representative. KCHA shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.

- 1) Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 2) To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, KCHA may in its discretion back charge Contractor for KCHA's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
- 3) The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to KCHA or other indemnified party to the extent of its active negligence.



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

August 21, 2024

**Subject:** Proposed Change Order No. 4 to Agreement 006-2024 with Heredia Cabling Solutions increasing the not to exceed amount by \$41,905 for additional nurse call devices at 4<sup>th</sup> floor D wing and 3<sup>rd</sup> floor C wing

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

**Summary:**

Kern Medical requests your Board approve the proposed Change Order No. 4 to the Agreement with Heredia Cabling Solutions in the amount of \$41,905 to provide additional nurse call devices at 4<sup>th</sup> floor D wing and 3<sup>rd</sup> floor C wing.

On January 17, 2024, your Board approved an agreement with Heredia Cabling Solutions in the amount of \$253,826 with authorization for the Chief Executive Officer to execute future change orders in an amount not to exceed 10% the total contract price, to provide temporary nurse call systems at 4<sup>th</sup> floor D wing and 3<sup>rd</sup> floor C wing.

On February 16, 2024, the Chief Executive Officer approved Change Order No. 1 in the amount of \$5,432 to provide additional dome lights and backboards into IDF closets.

On March 15, 2024, the Chief Executive Officer approved Change Order No. 2, in the amount of \$8,960 to install a video display console and 8 additional bed stations.

On March 15, 2024, the Chief Executive Officer approved Change Order No. 3, in the amount of \$2,946 to install backboards inside additional IDF closets.

This proposed Change Order No. 4 in the amount of \$41,905 provides compensation to the contractor to install additional devices required by Department of Health Care Access and Information (HCAI) upon plan approval of the emergency project.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve the Change Order with Heredia Cabling Solutions in the amount of \$41,905 for a new total of \$313,067; approve and authorize Chairman to sign.



## CHANGE ORDER

**PROJECT:**

Emergency Temp Nurse Call 4D and 3C  
1700 Mt. Vernon Avenue  
Bakersfield, CA 93306

**PROJECT NO.:** 10142  
**PURCHASE ORDER NO.:** 2324-048

**CONTRACTOR:**

Heredia Cabling Solutions  
5907 Woodmere Drive  
Bakersfield, CA 93313

**CHANGE ORDER NO.:** Four (4)

**DATE:** August 21, 2024

DESCRIPTION OF CHANGE		ADD	DEDUCT
1.	Provide all labor, material and equipment to install additional devices and add green light at each indicator at every patient room.	\$37,148.76	
2.	Provide all labor, material and equipment to install devices at two showers.	\$4,756.00	
CHANGE ORDER NO. 4 TOTAL (ADD)		\$41,904.76	
CHANGE ORDER NO. 3 TOTAL (ADD)		\$2,945.60	
CHANGE ORDER NO. 2 TOTAL (ADD)		\$8,959.05	
CHANGE ORDER NO. 1 TOTAL (ADD)		\$5,431.90	
ORIGINAL CONTRACT PRICE		\$253,825.69	
NEW CONTRACT AMOUNT		\$313,067.00	

<b>REASON FOR CHANGE</b>
--------------------------

1. Upon review by HCAI it was determined that the system requires a sound/light at the Nurse Station to meet the noise level requirements. HCAI also requires a green light to be installed at every patient room.
2. It was discovered that two showers were missed during the design.

Funds are available in the contract budget to cover this increase in cost.

**CONFORMANCE WITH SPECIFICATIONS:**

All work shall be done in conformance with the specifications as applied to work of a similar nature.

If the contractor refuses to sign this document, the work listed herein shall be performed on a force account basis.

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**SUBMITTED BY:**

Heredia Cabling Solutions

BY: \_\_\_\_\_

*Gabe Heredia*

Gabe Heredia

**APPROVED AS TO FORM**

BY: \_\_\_\_\_

Tyler Whitezell, COO

**APPROVED AS TO FORM:**

**Legal Services Department**

BY: \_\_\_\_\_

*Phillip Jenkins*

Phillip Jenkins  
Hospital Counsel

BY: \_\_\_\_\_

Scott Thygerson, CEO  
"Authority"

**KERN COUNTY HOSPITAL AUTHORITY**

BY: \_\_\_\_\_

Chairman of the Board

"Authority"



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

August 21, 2024

**Subject:** Proposed Agreement with CBCM Services, Inc., to complete the emergency sewer line installation at C wing basement

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

**Summary:**

Kern Medical requests your Board approve an Agreement for Professional Services with CBCM Services, Inc., to complete Phase I emergency replacement of the sewer line that runs through the C wing basement, under medical records, to the main point of connection at the doctor's parking lot on Flower Street.

The agreement is effective August 21, 2024, with construction anticipated to be complete within 4 months of commencement. The projected construction cost for this project is \$308,859, which includes future change orders up to 10% of the original contract price of \$280,781.

C.B.C.M Services, Inc., is a local contractor with extensive experience in emergency projects for local hospitals. They are highly professional and strictly adhere to all infection control requirements. Additionally, they consistently meet project deadlines with commendable reliability.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the Agreement with CBCM Services, Inc., from August 21, 2024 through project completion, authorize Chairman to sign, and authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price of \$280,781 for approval of up to \$308,859.

**THIS SCHEDULE** shall be effective on: August 21, 2024 ("Effective Date") and shall terminate upon project completion.  
Kern County Hospital Authority Department: Construction ("Responsible KCHA Department") Located at: 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.  
Service Provider: CBCM Services, Inc., ("Consultant") Located at: 3232 Chester Lane, Bakersfield CA 93306.  
Consultant is (select one):      ☐ Sole Proprietorship  
  ☒ Incorporated in the State of California.  
  ☐ Other (specify) \_\_\_\_\_.

Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder, including any reimbursement of travel expenses and other costs incurred by Consultant under this Agreement, in an aggregate sum not to exceed \$280,780.20 and Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

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

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

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

Date: 8/06/2024.

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

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

**RECITALS**

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

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

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

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

**AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit A: Services

Exhibit A-1: IRS Form W-9

Exhibit B: Fee Schedule

Exhibit C: Insurance

Exhibit D: Intentionally Omitted

Exhibit E: Additional Engineering Terms

**EXHIBIT A**  
**SERVICES**

Repair and installation of sewer line replacement.

**EXHIBIT A-1**  
**IRS FORM W-9**

**EXHIBIT B**  
**FEE SCHEDULE**

## **EXHIBIT "C"**

### **INSURANCE**

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

3. Automobile Liability Insurance:

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

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

[Intentionally left blank]

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

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

**I. COMPLIANCE WITH LABOR STANDARDS**

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

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

**II. APPRENTICESHIP PROGRAM**

**1. Compliance Required**

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

**2. Certification of Approval**

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

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

**3. Fund Contributions**

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

**4. Apprenticeship Standards**

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

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

**1. INSURANCE**

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

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

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

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

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

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

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

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

## **2. INDEMNIFICATION**

A. In addition to the Indemnification requirements in the Agreement, KCHA and each of its officers, employees, consultants and agents including, but not limited to, its Board, Project Manager and any Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

B. To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, KCHA in accordance with the Agreement and with respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against KCHA and each of its officers, employees, consultants and agents including, but not limited to KCHA, the Board, Project Manager and any Representative. KCHA shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.

- 1) Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 2) To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, KCHA may in its discretion back charge Contractor for KCHA's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
- 3) The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to KCHA or other indemnified party to the extent of its active negligence.





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

August 21, 2024

**Subject:** Proposed Change Order No. 4 to Agreement 107-2022 with McMurtrey Lince, Inc.

**Recommended Action:** Make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; Approve; Sign

**Summary:**

Kern Medical requests your Board approve proposed Change Order No. 4 to Agreement No. 107-2022 with McMurtrey Lince, Inc. in the amount of \$58,153, to install a new headwall, modify electrical for door openers and install new door hardware the Emergency Isolation room.

On September 21, 2023, your Board approved an agreement with McMurtrey Lince, Inc., in the amount of \$498,500, with authorization for the Chief Executive Officer to execute future change orders in an amount not to exceed 10% of the total contract price, to construct an isolation room in the Emergency Department. This Change Order No. 3 exceeds the 10% threshold and now requires your Board approval.

Change Order No. 1, in the amount of \$6,942, provides compensation for added fire alarm work.

Change Order No. 2, with a credit amount of (\$1,042) provides a credit for nurse call devices and cabinet modifications.

Change Order No. 3, in the amount of \$103,191 compensates the contractor for installation of medical gas and oxygen.

Proposed Change Order No. 4 provides compensation for the new headwall; door hardware; and electrical modifications.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve the Change Order in the amount of \$58,153 for a new total of \$665,762; authorize Chairman to sign the Change Order.

## CHANGE ORDER

**PROJECT:**

Emergency New Isolation Room  
1700 Mt. Vernon Avenue  
Bakersfield, CA 93306

PROJECT NO.: 10076  
CONTRACT NO.: 107-2022

**CONTRACTOR:**

McMurtrey Lince  
1025 Espee Street  
Bakersfield, CA 93301

CHANGE ORDER NO.: Four

DATE: August 21, 2024

DESCRIPTION OF CHANGE	ADD	DEDUCT
1. Provide all labor, material and equipment to install new head wall; modify electrical for door openers; associated drywall/paint; install new door hardware.	\$41,479.00	
2. Contractor extended General Conditions for 2 weeks.	\$16,674.00	
CHANGE ORDER NO. 4 TOTAL (ADD)	\$58,153.00	
CHANGE ORDER NO. 3 TOTAL (ADD)	\$103,191.00	
CHANGE ORDER NO. 2 TOTAL (DEDUCT)	(\$1,024.00)	
CHANGE ORDER NO. 1 TOTAL (ADD)	\$6,942.00	
ORIGINAL CONTRACT PRICE	\$498,500.00	
NEW CONTRACT AMOUNT	\$665,762.00	

<b>REASON FOR CHANGE</b>
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- 1 Due to air flow issues in the Emergency Department, special door closures were required to meet the close time at each door; due to the existing utilities in the walls a new head wall for the medical air was required.
2. Due to design errors and omissions for the medical air system in the patient room, the project was extended out by 6 months. Contractor is charging 14 days for General Conditions and Overhead.

Funds are available in the contract budget to cover this increase in cost.

CONFORMANCE WITH SPECIFICATIONS:

All work shall be done in conformance with the specifications as applied to work of a similar nature.

If the contractor refuses to sign this document, the work listed herein shall be performed on a force account basis.

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**SUBMITTED BY:**

McMurtrey Lince

BY: \_\_\_\_\_

Jim McMurtrey

**APPROVED AS TO CONTENT:**

BY: \_\_\_\_\_

Erin Garcia, Project Manager  
Teter, LLP

**APPROVED AS TO FORM:**

Legal Services Department

BY: \_\_\_\_\_

Phillip Jenkins  
Hospital Counsel

BY: \_\_\_\_\_

Scott Thygerson, CEO

**KERN COUNTY HOSPITAL AUTHORITY**

BY: \_\_\_\_\_

Chairman, Board of Governors  
"KCHA"



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

August 21, 2024

**Subject:** Proposed retroactive First Amendment to Agreement 540-2021 with the County of Kern for Medi-Cal Administrative Activities

**Recommended Action:** Approve; Authorize Chairman to Sign.

**Summary:**

Kern Medical requests that your Board approve the proposed retroactive First Amendment to Agreement No. 540-2021 with the County of Kern for Medi-Cal Administrative Activities (MAA). Since July 1, 2019, Kern Medical has performed MAA on behalf of the County of Kern to assist in the proper and efficient administration of the Medi-Cal Program in Kern County by improving the availability and accessibility of medical services to Medi-Cal eligible individuals and their families. As the County contractor, Kern Medical ensures all requirements of the California Department of Healthcare Services (CDHCS) County-Based MAA Provider Manual and the CDHCS Policy and Procedures Letters are met in applying MAA.

Kern Medical provides quarterly claims for payment to the County of Kern in anticipation of reimbursement of up to 50% of administrative cost associated with MAA. Reimbursement received by the County from CDHCS will be disbursed to Kern Medical, less the 7.5% administrative fees for services rendered. For providing services under this Agreement, Kern Medical may be reimbursed up to eighteen million, five hundred thousand dollars (\$18,500,000) from federal funds for claims approved and reimbursed by CDHCS. The Agreement commenced on July 1, 2019 and in the last four-years, Kern Medical has already received \$7,758,340 in eligible reimbursement.

This First Amendment is retroactive due to a delay by the County of Kern.

Therefore, Kern Medical recommends your Board approve the proposed retroactive First Amendment to Agreement No. 540-2021 with the County of Kern, effective July 1, 2024, extending the term for five years through June 30, 2029, and authorize the Chairman to sign.

**FIRST AMENDMENT TO AGREEMENT NO. 540-2021 WITH KERN COUNTY  
HOSPITAL AUTHORITY FOR THE ADMINISTRATION OF COUNTY-BASED  
MEDI-CAL ADMINISTRATIVE ACTIVITIES**

**(COUNTY OF KERN - KERN COUNTY HOSPITAL AUTHORITY)**

**THIS FIRST AMENDMENT TO AGREEMENT ("Amendment No. 1")**, is made and entered into on \_\_\_\_\_, ("**Execution Date**") by and between the COUNTY OF KERN, a political subdivision of the state of California, ("**COUNTY**") which contains the constituent department of KERN COUNTY PROBATION DEPARTMENT ("**PROBATION**") and KERN COUNTY HOSPITAL AUTHORITY, a local unit of government ("**KCHA**"), which owns and operates Kern Medical Center ("**KERN MEDICAL**"). PROBATION and KERN MEDICAL may be referred to individually as "**PARTY**" and collectively as "**PARTIES**."

**WITNESSETH:**

**WHEREAS:**

- A.** PARTIES entered into Agreement No. 540-2021, dated September 14, 2021, which is on file with the Clerk of the Board of Supervisors of the County of Kern and is incorporated herein by this reference, whereby KCHA agrees to establish a means of claiming Medicaid federal financial participation (FFP) funds for assisting the California Department of Health Services (CDHCS) in the proper and efficient administration of Medi-Cal as set forth in Welfare and Institution (W&I) Code Section 14132.47. PROBATION recognizes KERN MEDICAL's expertise in identifying and assessing the health care needs of Medi-Cal eligible individuals it serves. The agreement is valid and enforceable only if sufficient funds are available to Probation by CDHCS for the fiscal years covered by the terms of this agreement.
- B.** PARTIES desire to amend Agreement No. 540-2021 to include certain modifications as set forth in this Amendment No. 1; and

**NOW, THEREFORE**, the PARTIES mutually agree hereto as follows:

- 1. **Section 1., TERM** shall be deleted in its entirety and superseded by the following:
  - "1. TERM**. The term of this Amendment No. 1 shall commence on July 1, 2019, and shall end on June 30, 2029, unless terminated pursuant to other provisions of this Agreement as herein stated."
- 2. **Section 3., COMPENSATION** shall be deleted in its entirety and superseded by the following:
  - "3. COMPENSATION**. For providing services under this MOU, KERN MEDICAL may be reimbursed up to a maximum amount of EIGHTEEN MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$18,500,000) over the full term of the MOU from federal funds for claims approved and reimbursed by CDHCS.



3. **Section 18, POLITICAL OR RELIGIOUS ACTIVITY** is added to the MOU and incorporated herein by this reference:

No person performing any service or providing any goods designated under this Agreement shall participate in any political or religious activity on County time or in any manner involving the use of county property or expenditure of public funds nor conveying the implication of County endorsement or support for a candidate for local, state, or federal office.

Notwithstanding the foregoing, nothing in this Agreement shall be construed to unlawfully limit an individual's Constitutional rights. Accordingly, the limitations contained in this section are for the sole purpose of preventing proselytizing and politicking while engaged in the performance of services under this Agreement.

4. Except as otherwise defined herein, all capitalized term used in this Amendment No. 1 have the meaning set forth in the Agreement.
5. This Amendment No. 1 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 Agreement and any and all amendments thereto shall remain in full force and effect.

**IN WITNESS WHEREOF**, the PARTIES hereto have executed this Amendment No. 1 on the date and year first above written.

**COUNTY OF KERN**

**KERN COUNTY HOSPITAL AUTHORITY**

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

By \_\_\_\_\_  
Phil McLaughlin, Chairman

**APPROVED AS TO CONTENT**

Kern County Probation Department

**APPROVED AS TO CONTENT**

Kern Medical Center

By \_\_\_\_\_  
William P. Dickinson, Chief Probation Officer

By \_\_\_\_\_  
Andrew Cantu, Chief Financial Officer

**APPROVED AS TO FORM**

Office of the County Counsel

**APPROVED AS TO FORM**

Legal Services Department

By \_\_\_\_\_  
Kathleen Rivera, Chief Deputy County Counsel

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



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

August 21, 2024

**Subject:** Proposed acceptance of donation of travel and related expenses from Healthfuse, LLC for the Healthfuse "Fall Client Summit"

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

The Authority's conflict of interest policy prohibits employees from receiving or accepting money or any other considerations 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.

The Authority contracts with Healthfuse, LLC for revenue cycle vendor performance management . Healthfuse helps hospitals optimize revenue cycle vendor performance, which results in increased collections, more useful reporting and analytics, better contract negotiations, and vendor invoice reconciliation services. To date, the Authority has improved its fiduciary responsibilities by adopting Healthfuse's standards of performance accountability for current and future revenue cycle vendors. As of June 30, 2024, the total value achieved is \$1.9 million with the use of Healthfuse's services. This preliminary net cost savings is based upon cash factor improvements with current vendors, cash factor improvements with new initiatives, cost savings through vendor negotiations and cost savings with invoice recoveries.

Healthfuse, LLC has offered to donate travel and related expenses for one Kern Medical employee to attend their Fall Client Summit in Milwaukee, Wisconsin, on September 19, 2024. This training session is necessary in connection with official Authority business.

Therefore, it is recommended that your Board adopt the attached proposed resolution to accept the travel donation from Healthfuse, LLC 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**

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In the matter of:

Resolution No. 2024-\_\_\_\_

**ACCEPTANCE OF DONATION OF  
TRAVEL AND RELATED EXPENSES  
FROM HEALTHFUSE, LLC FOR  
HEALTHFUSE FALL CLIENT SUMMIT**

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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 21st day of August, 2024, 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

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Mona A. Allen

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**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) The Authority contracts with Healthfuse, LLC to help optimize revenue cycle vendor performance; and

(c) Healthfuse, LLC has offered to donate to the Authority travel and related expenses for one Authority employee to attend the Healthfuse “Fall Client Summit” on September 19, 2024, in Milwaukee, Wisconsin; and

(d) The training session is necessary in connection with official Authority business; and

(e) The Authority desires to obtain the donation of travel and related expenses from Healthfuse, LLC to the Authority and will retain full control over the use of the donation; and

(f) There are no 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 Healthfuse, LLC the donation of travel and related expenses for one Authority employee to travel to Milwaukee, Wisconsin, to attend the Healthfuse “Fall Client Summit” on September 19, 2024.

3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend the Healthfuse “Fall Client Summit” on September 19, 2024.

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 21, 2024

**Subject:** Proposed Ordering Document CPQ-3522005 with Oracle America, Inc. to secure equipment, equipment support, sublicensed software, and sublicensed software support for the management of vital signs devices at Kern Medical's Correctional clinic

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

**Summary:**

Kern Medical requests that your Board approve the proposed Ordering Document CPQ-3522005 with Oracle America, Inc., in an amount not to exceed \$5,969 plus taxes and fees, beginning on August 21, 2024 through the end of the underlying Cerner business contract (HA#2016-36), December 31, 2027.

Oracle will provide licensed software, bidirectional interfaces, and implementation services for the installation and operation of management of vital signs devices at the Correctional clinic.

Counsel is unable to approve due to non-standard terms which include third party products and services with pass-through provisions, which are accepted without Counsel approval, and changes to costs with little to no negotiation.

The proposed software will integrate a currently manual process into the electronic health record, reducing human error and creating a safer environment for our patients, therefore, it is recommended that your Board approve the proposed Ordering Document CPQ-3522005 with Oracle America, Inc. for the purchase of equipment, equipment support, sublicensed software, and sublicensed software support, with a maximum payable of \$5,969 plus taxes and fees, for the remainder of the term of the underlying Cerner Business Agreement, and authorize the Chairman to sign.

**Kern County Hospital Authority**  
1830 Flower St  
Bakersfield CA, 93305  
US

**Oracle America, Inc.**  
500 Oracle Parkway  
Redwood Shores, CA  
94065

**Contact**  
Margaret Johnson  
+1 (661) 326-2800  
margaret.johnson@kernmedical.com

Fee Summary

Fee Description	Net Fees	Monthly Fees	Annual Fees
Equipment and Equipment Support - New Order	5,968.50	0.00	0.00
Total Fees	5,968.50	0.00	0.00

## Billing Frequency

Description	% of Total Due	Payment Due
Equipment	100%	Upon delivery

## Ordered Items

### Equipment and Equipment Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
7607595	Connex Accessory Cable Management Stand. Includes Welch Allyn 1-year Standard Equipment Warranty [Mfg Part Num: 4800-60]	--	3rd Party	2	296.53	593.06	--
7607642	CVSM 6800, Sp02 (Masimo), SureTemp, NIBP. Includes Welch Allyn 2-year Standard Equipment Warranty [Mfg Part Num: 68MXTX-B]	--	3rd Party	2	2,687.72	5,375.44	--
B59411	Hardware Freight Fee	--	--	1	--	0.00	--
Subtotal						5,968.50	0.00

## Permitted Facilities

Name	Street Address	City
Kern County Hospital Authority	1830 Flower St	Bakersfield, CA, 93305 US

## **A. Terms of Your Order**

### **1. Applicable Agreement**

a. This order incorporates by reference the terms of the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-36) LA-0000010943 and all amendments and addenda thereto (the "Agreement"). The defined terms in the Agreement shall have the same meaning in this order unless otherwise specified herein.

Oracle America, Inc. is acting as ordering and invoicing agent for Cerner Corporation. Your order remains between You and Cerner Corporation. All references to "Oracle", "we", "us", or "our" shall refer to Cerner Corporation. We may refer to Client as "You".

### **2. Fees and Payments**

a. Listed above is a summary of net fees due under this order. All fees on this order are in US Dollars.

b. Fees will be invoiced in accordance with the Billing Frequency table above.

c. You are responsible for all shipping and handling fees.

d. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the items You ordered, except for taxes based on Oracle's income. If You will be claiming an exemption from these taxes, You will provide to Oracle a valid certificate of tax exemption in advance of, or at the time of, the execution of this order. You are responsible to ensure that You provide Oracle with timely notification of any tax exemption status changes and to timely provide updated exemption certificates in the event any previously provided exemption certificate expires during the term of this order.

e. Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement and this order.

### **3. Terms Applicable to Ordered Items**

#### **a. Scope of Use.**

You will use the Ordered Items in this order in accordance with the Documentation and subject to the quantity of the item specified in the Ordered Items table(s) above. This order incorporates by reference the scope of use metric, definition, and any rules applicable to the Ordered Item as described in the Oracle Health Definitions and Rules Booklet v061524 which may be viewed at <http://www.oracle.com/contracts> on the Oracle Health tab.

If the quantity of an Ordered Item is exceeded, You agree to execute a new order setting forth the additional quantity of the item.

Where applicable, scope of use will be measured periodically by Oracle's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g., FTEs or locations), You will provide the relevant information (including records to verify the information) to Oracle at least once per year. You agree that if an event occurs that will affect Your scope of use (such as the acquisition of a new hospital or other new facility), You will notify Oracle in writing of such event no later than 30 days following the effective date of such event so that Your scope of use can be reviewed. Any additional fees due under this section will be payable within 30 days following Your receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

#### **b. Third-Party Products and Services and Pass-Through Provisions.**

Certain products and services are provided by third-party suppliers (the "Third-Party Offerings"). Third-Party Offerings You have ordered, if any, are identified with pass-through code(s) in the Ordered Items table(s) above and will be provided under the applicable terms required by the third-party supplier. Applicable pass-through terms for each supplier are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

Oracle is not liable under this order for any damages of any kind or nature related to or arising out of the Third-Party Offerings. Oracle does not warrant or provide any indemnities on Third-Party Offerings. To the extent that any third-party pass-through provisions contain liability limitations with respect to the Third-Party Offerings, such limitations state the total maximum liability of Oracle (and then only to the extent that Oracle can collect from supplier for Your benefit) and each supplier with respect to the Third-Party Offerings.

#### **c. Shared Computing Services.**

You understand that Oracle may deliver the products and services on this order in a Shared Computing Services model. The policies that govern the Shared Computing Services model are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

#### **d. Permitted Facilities.**

The Ordered Items in this order are for use by the facilities listed in the Permitted Facilities table(s) above. You may add or substitute Permitted Facilities by amending this order.

## **4. Equipment and Equipment Support**

### **a. Delivery, Installation and Acceptance of Equipment.**

(i) You are responsible for installation of the Ordered Items identified as Equipment in the table(s) above unless You purchase installation services from Oracle for that Equipment.

(ii) Oracle will deliver the Equipment in accordance with Oracle's Order and Delivery Policies which are in effect at the time of Your order, and which are available at <http://www.oracle.com/contracts> on the Oracle Health tab. Oracle will use the delivery address specified by You on this order.

(iii) The Equipment You have ordered will be delivered: DDP; Freight prepaid and charged back via delivery method HARDWARE - STANDARD.

(iv) Acceptance of the Equipment is deemed to occur on delivery.

(v) Oracle may make and invoice You for partial deliveries.

(vi) Oracle may make substitutions and modifications to the Equipment and Equipment Support based on availability or technological advancements.

(vii) Oracle will use its reasonable commercial efforts to deliver the Equipment within the timeframes specified in this order.

**b. Transfer of Title.**

Title to the Equipment will transfer upon delivery.

**c. Warranty.**

In the event that a warranty is provided by Oracle or a third-party, such warranty will be identified in the description of the Equipment ordered and details of the warranty will be available in the Oracle Health Equipment Warranty Policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**d. Equipment Support.**

If ordered, support for Your Equipment will be provided in accordance with the Oracle Health technical support policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**5. Order of Precedence**

a. In the event of inconsistencies between the terms contained in this order and the Agreement, this order shall take precedence. This order will control over the terms contained in any purchase order.

**6. Effective Date**

a. If accepting this order electronically, the effective date of this order is the date You click to accept the order. If accepting this order via E-sign, the effective date of this order is the date You adopt and sign. If accepting this order via Download and Sign, the effective date is the date You return the document to Oracle. Otherwise, the effective date is the last signed date stated below.

**7. Offer Validity**

a. This offer is valid through 2-Oct-2024 and shall become binding upon execution by You and acceptance by Oracle.

Kern County Hospital Authority	
Signature	
Name	<u>Phil McLaughlin</u>
Title	<u>Chairman, Board of Governors</u>
Signature Date	<u>August 21, 2024</u>

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Shannon Hochstein  
Kern County Hospital Authority

## Bill To / Ship To Contact Information

### Bill To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	1830 Flower St Bakersfield, CA US 93305	Sandra Bakich 661-862-8110 Sandra.Bakich@kernmedical.com

### Ship To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	Correctional Medicine - Justice Facility 17950 1700 Mount Vernon Ave Bakersfield, CA US 93305	Margaret Johnson +1 (661) 326-2800 margaret.johnson@kernmedical.com



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

August 21, 2024

**Subject:** Proposed Engagement Letter from Moss Adams LLP

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

**Summary:**

Kern Medical requests your Board approve the proposed Engagement Letter from Moss Adams LLP, an independent contractor, for financial auditing services for fiscal year ending June 30, 2024.

The primary purpose of an external financial audit is to conduct an audit sufficient to express an opinion as to whether the Kern County Hospital Authority's financial statements are fairly presented in accordance with Generally Accepted Accounting Principles and whether supplementary information is fairly presented in relation to the basic financial statements. The audit will include an evaluation and report of the Authority's internal controls for the purpose of identifying areas of weakness or noncompliance.

The parties have agreed on a payment schedule for the services based on a total fee estimate of \$165,000 - \$175,000. In addition to fees, we will be billed for expenses. Invoices will include a flat expense charge, calculated as 5% of fees, estimated as \$8,750, to cover expenses such as copying costs, postage, administrative billable time, report processing fees, filing fees, and technology expenses. Travel and related expenses, which are estimated not to exceed \$15,000, will be billed separately and are not included in the 5% charge, and will be reimbursed in accordance with the terms set forth in the separate Agreement for Professional Services.

Therefore, it is recommended that your Board approve the Engagement Letter from Moss Adams LLP, in an amount not to exceed \$198,750, and authorize the Chairman to sign.



August 12, 2024

Phil McLaughlin, Chairman, Board of Governors  
Andrew Cantu, Chief Financial Officer  
Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306-4018

Re: Audit and Nonattest Services

Dear Chairman McLaughlin:

Thank you for the opportunity to provide services to Kern County Hospital Authority, a local unit of government and a subdivision of the state of California, which owns and operates Kern Medical Center ("Kern Medical"). This engagement letter ("Engagement Letter") and the attached Agreement for Professional Services (Agreement #036-2024) between Moss Adams LLP and Kern County Hospital Authority, effective April 1, 2024 ("PSA"), which is incorporated by this reference, confirm our acceptance and understanding of the terms and objectives of our engagement, and limitations of the services that Moss Adams LLP ("Moss Adams," "we," "us," and "our") will provide to Kern County Hospital Authority ("you," "your," "KHCA," and "Company").

### **Scope of Services – Audit**

You have requested that we audit the Company's financial statements, which comprise the statement of net position as of June 30, 2024, and the related statements of revenue, expenses, and changes in net position, and cash flows for the year then ended, and the related notes to the financial statements.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information ("RSI"), such as management's discussion and analysis, to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to Government's RSI in accordance with auditing standards generally accepted in the United States of America. We will not express an opinion or provide assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide assurance. The following RSI will be subjected to certain limited procedures, but will not be audited:

- 1) Management's discussion and analysis
- 2) Schedule of the proportionate share of the net OPEB liability for Kern Medical
- 3) Schedule of the proportionate share of the net pension liability for Kern Medical
- 4) Schedule of contributions for Kern Medical

### **Scope of Services and Limitations – Nonattest**

We will provide the Company with the following nonattest services:

- 1) Assist you in drafting the financial statements and related footnotes as of and for the year ended June 30, 2024. Although we will assist in drafting the financial statements and related footnotes, our fee estimate included in this engagement letter is based on management providing a substantially complete working draft of the financial statements and required footnotes. Should you request additional assistance, we can discuss the additional fees that may be required prior to commencing additional work.

Our professional standards require that we remain independent with respect to our attest clients, including those situations where we also provide nonattest services such as those identified in the preceding paragraphs. As a result, Company management must accept the responsibilities set forth below related to this engagement:

- Assume all management responsibilities.
- Oversee the service, by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to oversee our nonattest services. The individual is not required to possess the expertise to perform or reperform the services.
- Evaluate the adequacy and results of the nonattest services performed.
- Accept responsibility for the results of the nonattest services performed.

It is our understanding that Andrew Cantu, the Company's Chief Financial Officer, has been designated by the Company to oversee the nonattest services and that in the opinion of the Company is qualified to oversee our nonattest services as outlined above. If any issues or concerns in this area arise during the course of our engagement, we will discuss them with you prior to continuing with the engagement.

### **Timing**

Stacy Stelzriede is the engagement partner, and Kristen Olko is responsible for supervising the engagement and authorizing the signing of the report. We expect to perform interim procedures beginning on August 19, 2024, final procedures beginning on October 21, 2024, and issue our report no later than December 31, 2024. As we reach the conclusion of the audit, we will coordinate with you the date the audited financial statements will be available for issuance. You understand that (1) you will be required to consider subsequent events through the date the financial statements are available for issuance, (2) you will disclose in the notes to the financial statements the date through which subsequent events have been considered, and (3) the subsequent event date disclosed in the footnotes will not be earlier than the date of the management representation letter and the date of the report of independent auditors.

Our scheduling depends on your completion of the year-end closing and adjusting process prior to our arrival to begin the fieldwork. We may experience delays in completing our services due to your staff's unavailability or delays in your closing and adjusting process. You understand our fees are subject to adjustment if we experience these delays in completing our services.

### **Fees**

We have agreed to the following payment schedule for the services based on a total fee estimate of \$165,000 - \$175,000.

Month Due	Amount
August 2024	\$50,000
September 2024	\$50,000
October 2024	\$50,000
November 2024	\$15,000 - \$25,000
Total	\$165,000 - \$175,000

In addition to fees, we will charge you for expenses. Our invoices include a flat expense charge, calculated as five percent (5%) of fees, estimated at \$8,750, to cover expenses such as copying costs, postage, administrative billable time, report processing fees, filing fees, and technology expenses. Travel expenses and client meal expenses, which shall not exceed \$15,000, will be billed separately and are not included in the 5% charge, and will be reimbursed in accordance with the terms set forth in the PSA.

### **Reporting**

We will issue a written report upon completion of our audit of the Company's financial statements. Our report will be addressed to the Board of Governors of the Company. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. Our services will be concluded upon delivery to you of our report on your financial statements for the year ended June 30, 2024.

### **Objectives of the Audit**

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

The objectives also include reporting on the following:

- Internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by Government Auditing Standards.

The report on internal control and compliance will include a statement that the purpose of the report is solely to describe the scope of testing of internal control over financial reporting and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the entity's internal control over financial reporting or on compliance, that the report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the entity's internal control over financial reporting and compliance, and, accordingly, it is not suitable for any other purpose.

### **The Auditor's Responsibility**

We will conduct our audit in accordance with U.S. GAAS and the standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. As part of an audit conducted in accordance with U.S. GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control or to identify deficiencies in the design or operation of internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements, including the disclosure, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation
- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time

If our opinion on the financial statements is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

### **Procedures and Limitations**

Our procedures may include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of certain receivables and certain other assets, liabilities and transaction details by correspondence with selected customers, creditors, and financial institutions. We may also request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from management about the financial statements and related matters. Management's failure to provide representations to our satisfaction will preclude us from issuing our report.

An audit includes examining evidence, on a test basis, supporting the amounts and disclosures in the financial statements. Therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Material misstatements may include errors, fraudulent financial reporting, misappropriation of assets, or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that are attributable to the entity or to acts by management or employees acting on behalf of the entity that may have a direct financial statement impact. Pursuant to Government Auditing Standards, we will not provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements and noncompliance may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS and Government Auditing Standards. An audit is not designed to detect immaterial misstatements or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors, fraudulent financial reporting, misappropriation of assets, and noncompliance with the provisions of laws, regulations, contracts and grant agreements that come to our attention, unless clearly inconsequential. We will also inform you of any other conditions or other matters involving internal control, if any, as required by Government Auditing Standards. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any time period for which we are not engaged as auditors.

We may assist management in the preparation of the Company's financial statements and. Regardless of any assistance we may render, all information included in the financial statements remains the representation of management. We may issue a preliminary draft of the financial statements to you for your review. Any preliminary draft financial statements should not be relied upon, reproduced or otherwise distributed without the written permission of Moss Adams.

### **Management's Responsibility**

As a condition of our engagement, management acknowledges and understands that management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America. We may advise management about appropriate accounting principles and their application and may assist in the preparation of your financial statements, but management remains responsible for the financial statements. Management also acknowledges and understands that management is responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud. This responsibility includes the maintenance of adequate records, the selection and application of accounting principles, and the safeguarding of assets. You are responsible for informing us about all known or suspected fraud affecting the Company involving: (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, regulators or others.

Management is responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

Management is responsible for establishing and maintaining internal control over compliance with the provisions of laws, regulations, contracts, and grant agreements, and for identifying and ensuring that you comply with such provisions. Management is also responsible for addressing the audit findings and recommendations, establishing and maintaining a process to track the status of such findings and recommendations, and taking timely and appropriate steps to remedy any fraud and noncompliance with the provisions of laws, regulations, contracts, and grant agreements or abuse that we may report.

Management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Management agrees that as a condition of our engagement, management will provide us with:

- access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, whether obtained from within or outside of the general and subsidiary ledgers (including all information relevant to the preparation and fair presentation of disclosures), such as records, documentation, and other matters;
- additional information that we may request from management for the purpose of the audit; and
- unrestricted access to persons within the Company from whom we determine it necessary to obtain audit evidence.

### **Management's Responsibility to Notify Us of Affiliates**

Our professional standards require that we remain independent of the Company as well as any "affiliate" of the Company. Professional standards define an affiliate as follows:

- a fund, component unit, fiduciary activity or entity that the Company is required to include or disclose, and is included or disclosed in its basic financial statements, in accordance with generally accepted accounting principles (U.S. GAAP);
- a fund, component unit, fiduciary activity or entity that the Company is required to include or disclosed in its basic financial statements in accordance with U.S. GAAP, which is material to the Company but which the Company has elected to exclude, and for which the Company has more than minimal influence over the entity's accounting or financial reporting process;
- an investment in an investee held by the Company or an affiliate of the Company, where the Company or affiliate controls the investee, excluding equity interests in entities whose sole purpose is to directly enhance the Company's ability to provide government services;
- an investment in an investee held by the Company or an affiliate of the Company, where the Company or affiliate has significant influence over the investee and for which the investment is material to the Company's financial statements, excluding equity interests in entities whose sole purpose is to directly enhance the Company's ability to provide government services

In order to fulfill our mutual responsibility to maintain auditor independence, you agree to notify Moss Adams of any known affiliate relationships, to the best of your knowledge and belief. Additionally, you agree to inform Moss Adams of any known services provided or relationships between affiliates of the Company and Moss Adams or any of its employees or personnel.

### **Other Information Included in an Annual Report**

When financial or nonfinancial information, other than financial statements and the auditor's report thereon, is included in an entity's annual report, management is responsible for that other information. Management is also responsible for providing the document(s) that comprise the annual report to us as soon as it is available.

Our opinion on the financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon. Our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the audited financial statements. If we identify that a material inconsistency or misstatement of the other information exists, we will discuss it with you; if it is not resolved U.S. GAAS requires us to take appropriate action.

### **Key Audit Matters**

U.S. GAAS does not require the communication of key audit matters in the audit report unless engaged to do so. You have not engaged us to report on key audit matters, and the Agreement does not contemplate Moss Adams providing any such services. You agree we are under no obligation to communicate key audit matters in the auditor's report.

If you request to engage Moss Adams to communicate key audit matters in the auditor's report, before accepting the engagement we would discuss with you the additional fees to provide any such services, and the impact to the timeline for completing the audit.

### **Dissemination of Financial Statements**

Our report on the financial statements must be associated only with the financial statements that were the subject of our engagement. You may make copies of our report, but only if the entire financial statements (including related footnotes and supplementary information, as appropriate) are reproduced and distributed with our report. You agree not to reproduce or associate our report with any other financial statements, or portions thereof, that are not the subject of this engagement.

### **Offering of Securities**

This Agreement does not contemplate Moss Adams providing any services in connection with the offering of securities, whether registered or exempt from registration, and Moss Adams will charge additional fees to provide any such services. You agree not to incorporate or reference our report in a private placement or other offering of your equity or debt securities without our express written permission. You further agree we are under no obligation to reissue our report or provide written permission for the use of our report at a later date in connection with an offering of securities, the issuance of debt instruments, or for any other circumstance. We will determine, at our sole discretion, whether we will reissue our report or provide written permission for the use of our report only after we have conducted any procedures we deem necessary in the circumstances. You agree to provide us with adequate time to review documents where (a) our report is requested to be reissued, (b) our report is included in the offering document or referred to therein, or (c) reference to our firm is expected to be made. If we decide to reissue our report or provide written permission to the use of our report, you agree that Moss Adams will be included on each distribution of draft offering materials and we will receive a complete set of final documents. If we decide not to reissue our report or withhold our written permission to use our report, you may be required to engage another firm to audit periods covered by our audit reports, and that firm will likely bill you for its services. While the successor auditor may request access to our engagement documentation for those periods, we are under no obligation to permit such access.

### **Changes in Professional or Accounting Standards**

To the extent that future federal, state, or professional rule-making activities require modification of our audit approach, procedures, scope of work, etc., we will advise you of such changes and the impact on our fee estimate. If we are unable to agree on the additional fees, if any, that may be required to implement any new accounting and auditing standards that are required to be adopted and applied as part of our engagement, we may terminate this Agreement as provided herein, regardless of the stage of completion.

### **Representations of Management**

During the course of our engagement, we may request information and explanations from management regarding, among other matters, the Company's operations, internal control, future plans, specific transactions, and accounting systems and procedures. At the conclusion of our engagement, we will require, as a precondition to the issuance of our report, that management provide us with a written representation letter confirming some or all of the representations made during the engagement. The procedures that we will perform in our engagement will be heavily influenced by the representations that we receive from management. Accordingly, false representations could cause us to expend unnecessary efforts or could cause a material error or fraud to go undetected by our procedures. In



view of the foregoing, you agree that we will not be responsible for any misstatements in the Company's financial statements that we fail to detect as a result of false or misleading representations, whether oral or written, that are made to us by the Company's management. While we may assist management in the preparation of the representation letter, it is management's responsibility to carefully review and understand the representations made therein.

In addition, because our failure to detect material misstatements could cause others relying upon our audit report to incur damages, the Company further agrees to indemnify and hold us harmless from any liability and all costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material misstatements in the Company's financial statements resulting in whole or in part from knowingly false or misleading representations made to us by any member of the Company's management.

### **Use of Electronic Communication**

In the interest of facilitating our services to you, we may communicate by facsimile transmission or send electronic mail over the Internet. Such communications may include information that is confidential. We employ measures in the use of electronic communications designed to provide reasonable assurance that data security is maintained. While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept we have no control over the unauthorized interception of these communications once they have been sent. Unless you issue specific instructions to do otherwise, we will assume you consent to our use of electronic communications to your representatives and other use of these electronic devices during the term of this Agreement as we deem appropriate.

### **Use of Moss Adams' Name**

The Company may not use any of Moss Adams' name, trademarks, service marks or logo in connection with the services contemplated by this Agreement or otherwise without the prior written permission of Moss Adams, which permission may be withheld for any or no reason and may be subject to certain conditions.

### **Use of Nonlicensed Personnel**

Certain engagement personnel who are not licensed as certified public accountants may provide services during this engagement.

### **Hiring of Employees**

Any offer of employment to members of the audit team prior to issuance of our report may impair our independence, and as a result, may result in our inability to complete the engagement and issue a report.

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We appreciate the opportunity to be of service to you. If you agree with the terms of our engagement as set forth in the Agreement, please sign the enclosed copy of this letter and return it to us with the Professional Services Agreement.

Very truly yours,



Stacy Stelzriede, Partner, for  
Moss Adams LLP



Kristen Olko, Senior Manager, for  
Moss Adams LLP

Enclosures

**Accepted and Agreed:**

This Engagement Letter and the attached PSA set forth the entire understanding of Kern County Hospital Authority with respect to this engagement and the services to be provided by Moss Adams LLP:

Signature: \_\_\_\_\_

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

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

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

**Accepted and Agreed:**

LEGAL SERVICES DEPARTMENT:

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

Vice President & General Counsel  
Kern County Hospital Authority



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

August 21, 2024

**Subject:** Proposed Amendment to Customer Agreement 10043609 with CareFusion Solutions, LLC for the return of two devices

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

**Summary:**

Kern Medical requests your Board approve the proposed amendment with CareFusion Solutions, LLC for the “Footprint Modification Option (FMO)” which would allow for the return of two (2) devices which are no longer needed.

Kern Medical utilizes 45 automated dispensing cabinets (BD Pyxis) to distribute medications to patients in our hospital and in our Columbus Clinics. Prior to the 4C remodel, there were two additional BD Pyxis stations in the 4C patient care area that are no longer in use. The current contract contains a total 47 BD Pyxis devices, and includes the two devices that are no longer in use. The amendment to the original agreement would allow us to return the unutilized devices and reduce our monthly costs by \$1,802 per month.

Kern Medical recommends that your Board approve the proposed amendment with CareFusion Solutions, LLC for the one time return of unused devices and authorize the Chairman to sign.



## ***FMO Amendment to Customer Agreements & De-Implementation Timeline***

**Customer Legal (Sold-To) Name:** Kern Medical Center  
**Sold-To Number:** 10043609  
**Master Agreement Anniversary Date:** 11/07/2024  
**Contract Year:** 11/08/2023 - 11/06/2024  
**Date of Issuance:** 07/12/2024  
**Expiration Date:** 09/10/2024

Effective as of the date of both signatures below ("Effective Date"), this amendment ("Amendment") modifies the Customer Agreement(s) (or, if applicable, Rental Agreement(s) and Support Agreement(s)) set forth in **Schedule 1**, attached hereto and incorporated by this reference, (each, a "Customer Agreement" and, collectively, the "Customer Agreements"). Capitalized terms herein will have the same meanings used in the Customer Agreements. In the event of any conflict between the terms of the Customer Agreements and this Amendment, the terms of this Amendment will control.

- FMO Products**. The Pyxis Products listed in **Schedule 1** (hereafter, FMO Products) are eligible for return to CareFusion pursuant to the Footprint Modification Option memorialized in the Pyxis™ Footprint Modification Option letter dated April 1, 2017 or the applicable Customer Agreements. Customer will return each FMO Product and CareFusion will accept each FMO Product; subject to the timely satisfaction of the terms and conditions set forth herein.
- FMO Product Managers**. Customer hereby authorizes, and shall assure that, each of the following individuals (each, a "FMO Product Manager") manage the completion of the FMO Product Activities (as such term is defined below). A minimum of two (2) such contacts shall be designated and hereby authorized by Customer below:

Contact Name: Jeff Jolliff, PharmD	<b>Contact Name:</b> Lorena Delanda, CPhT
Phone Number: 661-326-2191	Phone Number: 661-326-2509
E-Mail Address: jeff.jolliff@kernmedical.com	E-Mail Address: lorena.delanda@kernmedical.com

Contact Name: Sehjan Bhura, PharmD	<b>Contact Name:</b> Heba Taha, PharmD
Phone Number: 661-326-2617	Phone Number: 661-326-2329
E-Mail Address: sehjan.bhura@kernmedical.com	E-Mail Address: hebatullah.taha@kernmedical.com

- De-Implementation Timeline; FMO Product Activities**. Customer shall assure that the tasks and responsibilities set forth in the table below (each, a "FMO Product Activity") are completed on or before the Expiration Date set forth above. If Customer fails to complete the FMO Product Activities before the Expiration Date for any reason, then CareFusion may, at its sole option, (i) reschedule the applicable FMO Product Activities and agree on an extended Expiration Date, provided, however, that Customer reimburses CareFusion for expenses reasonably incurred as a result of rescheduling the FMO Product Activities; or (ii) terminate this Amendment upon ten (10) days' notice. Notwithstanding any other term or condition to the contrary, in no event will the Expiration Date for this Amendment extend more than thirty (30) days after the Contract Year defined above.



## ***FMO Amendment to Customer Agreements & De-Implementation Timeline***

De-Implementation Timeline		
Return Product Activities	Responsibilities	Completion Date, if applicable
(i) <b>Amendment Delivery</b>	<p>CareFusion will deliver this Amendment to Customer with the following documents attached:</p> <ul style="list-style-type: none"> <li>a. <b>Schedule 1</b>, Return Product Summary, including without limitation: <ul style="list-style-type: none"> <li>i. Customer Agreement number(s);</li> <li>ii. Ship-To location for each Customer Agreement;</li> <li>iii. Serial number for each Return Product;</li> <li>iv. Monthly Rental and Support Fees and/or Monthly Subscription Fees for each Return Product to be deducted from the net fees payable by Customer under the Customer Agreement(s); and</li> <li>v. The applicable return shipping fee for each Return Product ("Return Product Fees").</li> <li>vi. Credit Repayment amount for each applicable Return Product</li> </ul> </li> <li>b. <b>Schedule 2, FMO Summary</b>, including, without limitation: <ul style="list-style-type: none"> <li>i. Customer Agreement number(s);</li> <li>ii. Total Baseline Rental Value of each;</li> <li>iii. FMO Allowance Value;</li> <li>iv. Total Return Value for the Contract Year; and</li> <li>v. Percentage of FMO Exercised for each.</li> </ul> </li> </ul>	
(ii) <b>Amendment Execution;</b>	Customer will sign and deliver the Amendment to CareFusion.	
(iii) <b>Collection Date</b>	CareFusion will contact one or more of the FMO Product Managers to schedule collection of the FMO Products ("Collection Date"). Customer will be notified at least twenty four (24) hours before the Collection Date by the shipping agent.	
(iv) <b>Use of FMO Products</b>	Customer will (i) discontinue use of any FMO Products; and (ii) remove the Software from all Customer systems,	
(v) <b>Return Material Authorization; Return Labels; Master Agreement Anniversary Date</b>	CareFusion will provide (i) a Return Material Authorization form (" <u>RMA</u> ") for execution by the Parties, including the Master Agreement Anniversary Date for each FMO Product; and (ii) return labels to be affixed by Customer to each of the FMO Products. Customer will clearly mark the Facility Name and Customer Number on each label in black ink and large font.	
(vi) <b>FMO Product Preparation</b>	Customer will (i) remove all medications, data and Customer property without damage to the FMO Products; (ii) prepare the premises for removal of the FMO Products; (iii) lock all units and secure cables provided by CareFusion; and (iv) provide CareFusion with prompt notice that the FMO Products are ready for collection.	
(vii) <b>Equipment Location</b>	A FMO Product Manager will provide CareFusion with the location of the FMO Products for de-installation. If the Parties agreed in writing that Customer will de-install the FMO Products, then the FMO Product Manager will notify CareFusion of the location of the de-installed FMO Products; provided that any such location will be secure and remain temperature and	




## **FMO Amendment to Customer Agreements & De-Implementation Timeline**

	humidity controlled in accordance with the terms of the Customer Agreements.	
(viii) <b>Data Device</b>	Any Data device(s) removed from the FMO Products by CareFusion will be tendered to Customer by CareFusion. Customer will acknowledge in writing its receipt of any such Data device.	
(ix) <b>RMA Execution</b>	Customer will promptly sign the RMA subject to the execution instructions included therein and return the RMA to CareFusion.	

**4. FMO Termination Date.** Effective as of the first day of the month following the date CareFusion receives possession of the FMO Products, the applicable Rental Term(s), Support Term(s) and/or Subscription Term(s) for the FMO Products will terminate ("FMO Termination Date"), provided that Customer will remain fully liable for payment to CareFusion of any and all Monthly Rental Fees, Monthly Support Fees, Monthly Subscription Fees and other applicable fees incurred up to and including the day preceding the FMO Termination Date. All other terms and conditions of the applicable Agreements shall continue and apply in full force and effect for the remainder of the Rental and Subscription Terms (or such longer period as may be specified in the Customer Agreements), including, without limitation, those terms related to risk of loss and return of Rental Equipment. CareFusion will provide Customer with applicable invoice(s) for net Monthly Rental Fees, Monthly Support Fees and/or Monthly Subscription Fees payable by Customer for the remaining Pyxis Products in accordance with the terms of the Customer Agreements.

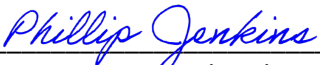
**5. Return Product Fees; Credit Repayment Amount.** CareFusion will separately invoice and Customer will timely pay within thirty (30) days of the Effective Date: (i) any amount required pursuant to the "Credit Repayment" terms of the Customer Agreement(s) (if applicable); and (ii) applicable Freight Fees for each FMO Product stated in **Schedule 1** within thirty (30) days of the Return Product Effective Date.

**Each person signing this Amendment represents that he/she intends to and has the authority to bind his/her respective Party to this Amendment.**

<b>Kern Medical Center</b>	<b>CareFusion Solutions, LLC</b>
Sign:	Sign: 
Print:	Print: Joshua Garcia
Title:	Title: Dispensing Returns Contract Analyst
Date:	Effective Date: 7/12/2024

Please countersign the provided documents and return to BD (or CareFusion Solutions, LLC) within 30- days from the date of BD's signature. If countersigned documents are not returned timely, BD's signature will expire and be of no force or effect after such 30-days period.

APPROVED AS TO FORM:  
Legal Services Department

By   
Kern County Hospital Authority



***FMO Amendment to Customer Agreements &  
De-Implementation Timeline***

**SCHEDULE 1**

**Return Product Summary**

Customer Agreement	Ship To Number	Ship To Location	Contract Number	Serial Number	Product Description	Rental Amount	Support Amount	Freight Fee
1000253922	10043609	KERN MEDICAL CENTER	4001805586	15359790	MEDSTATION,ES,MAIN,6DR	\$729.00	\$172.00	\$250.00
1000253922	10043609	KERN MEDICAL CENTER	4001805595	15359781	MEDSTATION,ES,MAIN,6DR	\$729.00	\$172.00	\$250.00
					Total	\$1,458.00	\$344.00	\$500.00



## ***FMO Amendment to Customer Agreements & De-Implementation Timeline***

### **SCHEDULE 2**

#### **FMO Summary**

<b>Customer Agreement Number</b>	<b>Total Baseline Rental Value</b>	<b>FMO Allowance</b>	<b>Current FMO Exercised %</b>	<b>Total FMO Exercised</b>	<b>FMO Exercised %</b>	<b>FMO Exercised Year to Date %</b>
1000253922	\$36,549.00	\$7,309.80	0.00%	\$1,458.00	4.0%	4.0%

***\*\* Note FMO Allowance, Total FMO Exercised and Total FMO Exercised % is total for the Contract Year including current request***





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

August 21, 2024

**Subject:** Proposed Agreement with Moh'd Akram Sbeih, M.D., a contract employee, for professional medical services in the Department of Surgery

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

**Summary:**

Kern Medical requests your Board approve an Agreement with Moh'd Akram Sbeih, M.D., for professional medical services in the Department of Surgery. Dr. Sbeih is board certified in general surgery and has specialized training in minimally invasive and bariatric surgery.

The proposed Agreement is for a term of three years from September 23, 2024, through September 22, 2027.

Dr. Sbeih will receive a guarantee salary for the first two years that includes payment for teaching and administrative services and the care of patients in the amount of the greater of (i) \$550,000 per year, or (ii) payment for teaching and administrative services and the care of KMC patients using the current Medical Group Management Association Physician Compensation and Production Survey for specialty at the rate of \$66.70 for each Worked RVU. Thereafter, he will be paid based strictly on his productivity at the rate of \$66.70 for each Worked RVU. This arrangement represents fair market value compensation for the services provided. In addition, Dr. Sbeih will be compensated for excess call coverage and after-hours clinic coverage. He will also receive a starting bonus of \$50,000. Dr. Sbeih will receive the same benefits offered all employed physicians to include eligibility to participate in the physicians' pension plan, health benefits, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical. The maximum payable under the Agreement will not exceed \$2,100,000 over the three-year term, excluding the cost of benefits.

Therefore, it is recommended that your Board approve the Agreement with Moh'd Akram Sbeih, M.D., a contract employee, for professional services in the Department of Surgery from September 23, 2024 through September 22, 2027, in an amount not to exceed \$2,100,000, plus applicable benefits, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Moh’d Akram Sbeih, M.D.)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Moh’d Akram Sbeih, 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 Surgery 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 is specially trained, experienced, expert, and competent to perform such services;

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** The initial term of this Agreement (“Initial Term”) shall be for a period of three (3) years, commencing as of September 23, 2024 (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 Person<sup>1</sup>; (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.

4.3.2 **Board Certification.** Physician shall be board certified by the American Board of Surgery in surgery-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.

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<sup>1</sup> 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.

4.3.4 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 she shall not enter into any other physician employment contract or otherwise engage in the private practice of medicine or provide psychiatry services to other organizations, directly or indirectly, during the Term of this Agreement 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 eighty (80) hours per biweekly pay period, and will be compensated with cash and other value as described below in this paragraph 5.1 (“Annual Salary”).

5.1.1 **September 23, 2024 through September 22, 2026.**

A) **Compensation Methodology.** Authority shall pay Physician a guarantee salary (“Guarantee Salary”) as payment for teaching and administrative services and the care of KMC patients in the amount of the greater of (i) \$550,000 (the “Minimum Amount”) per year, or (ii) payment for teaching and administrative services and the care of KMC patients using the current Medical Group Management Association Physician Compensation and Production Survey (“MGMA Survey Data”) with more than one year in the specialty for all physicians section. A conversion factor will be established by taking each category and dividing the physician compensation in that category by the worked relative value unit (“Worked RVU”). Physician will be compensated for each Worked RVU at the rate of \$66.70 (“RVU Effort”) for each Worked RVU in excess of 8,245 generated per Employment Year. No later than the end of each Employment Year, KMC will review the MGMA Survey Data to establish a new rate for the Worked RVU.

B) **Reconciliation of Guarantee Salary.** Within thirty (30) days after the end of each quarter during the Guarantee Period, KMC will calculate the RVU Effort for such immediately preceding quarter, taking into account the RVU Effort from September 23, 2024, through the end of the subject quarter, and the RVU Effort generated from the Guarantee Period shall be determined (the “Actual Amount”). KMC will undertake a reconciliation of the RVU Effort, for services provided by Physician during the Guarantee Period, no later than the end of one hundred twenty (120) days from the conclusion of the Guarantee Period. If the prorated Minimum Amount is lower than the Actual Amount, then such difference shall be paid to Physician as Guarantee Salary within thirty (30) days after such calculation has been completed.

5.1.2 **September 23, 2026 through September 22, 2027.**

A) **Annual Salary.** Authority shall pay Physician an Annual Salary comprised of the following: (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients using the current Medical Group Management Association Physician Compensation and Production Survey (“MGMA Survey”) full-time physician compensation with more than one year in the specialty for all physicians section. A conversion factor will be established by taking each category and dividing the physician compensation in that category by the worked relative value unit (“Worked RVU”) in that category. Physician will be compensated at the current rate of \$66.70 for each Worked RVU (“RVU Effort”).

B) Salary Adjustment. KMC will establish an estimate (“Estimate”) of Physician’s RVU Effort using Physician’s RVU Effort for the immediately preceding twelve (12) month period annualized. The Estimate will be divided by the number of Authority payroll periods in a calendar year in order to calculate the amount of RVU Effort to be paid to Physician each payroll period (the “Paycheck Amount”). Within thirty (30) days after the end of each quarter, KMC will calculate the RVU Effort for such immediately preceding quarter, and adjust the payment for RVU Effort accordingly (the “Actual Amount”). If the Estimate is lower than the Actual Amount, then such difference shall be paid to Physician within thirty (30) days after such calculation has been completed, or as of the effective date of any termination of this Agreement, whichever occurs sooner. If the Estimate exceeds the Actual Amount, then Physician shall pay such difference to KMC: (i) in a lump sum within thirty (30) days after such calculation has been completed; or (ii) through a reduction in the Paycheck Amount during the next quarter; or (iii) in a lump sum as of the effective date of any termination of this Agreement, whichever occurs sooner. The Estimate shall be reestablished as of each Employment Year. **Physician hereby expressly grants to KMC the right to offset any amounts owed to KMC against any payment to be made to Physician by KMC pursuant to this paragraph if Physician fails to pay such excess to KMC.**

5.1.3 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.

5.1.4 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 Excess Call Coverage. Authority shall pay Physician for excess call coverage (excludes acute care surgery and trauma surgery) as follows: (i) Physician shall be paid a fixed fee in the amount of \$350, less all applicable federal and state taxes and withholdings, per 24-hour day for every weekend and holiday of general surgery call coverage assigned that exceed one in four (1:4) weekends (Saturday and Sunday; designated Authority holidays only); and (ii) Physician shall be paid a fixed fee in the amount of \$250, less all applicable federal and state taxes and withholdings for every weekday night of general surgery call coverage assigned that exceeds one in four (1:4) weekday nights (Monday through Friday).

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

5.4 Starting Bonus.

5.4.1 Bonus. Physician shall receive a starting bonus in the amount of \$50,000, less all applicable federal and state taxes and withholdings, payable within ten (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 \$50,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

5.4.3 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 Professional Fee Billing.

5.5.1 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.

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

5.6 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,100,000 over the three (3) 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 twenty percent (20%) of the current biweekly premium. Physician is eligible for coverage the first (1st) day of the biweekly payroll period coincident with or next following the day he completes one (1) month of continuous service. Physician's initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least forty (40) hours per biweekly pay period to be eligible for coverage.

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

6.4 Vacation. Physician shall 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 shall 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 eighty (80) hours paid education leave annually. The first eighty (80) hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional eighty (80) hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The 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 \$30,000, payable in arrears, in accordance with Authority policy (no later than 90 days from the Commencement Date). 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 \$833.34 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.<sup>2</sup>

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.

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<sup>2</sup> By way of example only, in the event Physician terminates his employment after twelve (12) months then Physician will be vested to the extent of \$10,000 in the relocation expenses described herein and will be obligated to repay Authority the amount of \$20,000. **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.**

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

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

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

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

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

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

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

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

16. **[Reserved.]**

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

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

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

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

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

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

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

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

deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Physician:

Moh'd Akram Sbeih, M.D.  
10104 Bay Colony Drive  
Bakersfield, California 93312

Notice to Authority:

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is

denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; or (xvi) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

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

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

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

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

PHYSICIAN

By \_\_\_\_\_  
Moh'd Akram Sheih, M.D.

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

Agreement.Sbeih.080424

**EXHIBIT “A”**  
**JOB DESCRIPTION**  
**Moh’d Akram Sbeih, M.D.**

**Position Summary:** Reports to Chair, Department of Surgery; serves as Chief, Division of General of Surgery; serves as a full-time core general surgery faculty member in the Department; serves as Director of Bariatric Surgery; serves as a full-time faculty member in the Department providing no fewer than eighty (80) hours per biweekly pay period in teaching, administrative, and clinical activity; day-to-day activities and clinical workload will include coverage for non-acute general surgery; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of surgery, direct patient care, scholarly research and resident education; works collaboratively with clinic and surgery staff and hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

**Essential Functions:**

1. Clinical Responsibilities and Assignments:
  - Coordinates with current general surgery faculty schedules and activities to provide service and improve efficiency for general surgery clinical activities
  - Conducts daily inpatient rounds
  - Provides service and improves efficiency for general surgical and minimally invasive surgery cases
  - Provides faculty service for non-acute general surgical coverage
  - Supervises surgery Physician Assistant activity and competence
  - Operating Room – minimum of two (2) half days per week
  - KMC, Stockdale Highway, Truxtun Avenue, Q Street or other designated Practice Sites – minimum of three (3) half-day clinics per week
  - Provides call coverage in coordination with other faculty for non-acute general surgery
2. Administrative Responsibilities:
  - Assists in clinical and administrative integration efforts across KMC as appropriate for general surgery assisting with proper program planning, surgeon recruitment and faculty development, resource allocation, analysis, communication and assessment
  - Coordinates development activities and operations in the ambulatory surgery center for the general surgeons
  - Assists the Program Director with education, development and implementation of the surgery residency program
  - 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 for minimally invasive and general surgery services
  - Attends and actively participates in assigned Medical Staff and hospital committees
  - Participates in clinical and administrative integration efforts across the hospital as appropriate for the Department ensuring proper program planning, resource allocation, analysis, communication, and assessment



- 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
  - Provides didactic teaching and resident physician and medical student education, as assigned, and participates in setting goals and expectations for the surgery resident and medical student rotations
  - 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 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 and Authority and KMC policies and procedures
3. Teaching Responsibilities:
- Assists the Program Director with individual resident mentoring, counseling, and evaluation as appropriate for general surgery and critical care rotations
  - Assists with didactic curriculum and teaching conference activity including noon, preoperative, oncology, and journal club
  - Assists in resident research and scholarly activity
4. Bariatric Surgery:
- Develops a bariatric surgery program to include, without limitation, preoperative evaluation and workup, and postoperative follow-up
  - Provides inpatient and outpatient consultation and referral services
  - Plans and oversees a minimally invasive surgery service with resident supervision and education

**Employment Standards:**

One (1) year of post-residency experience in general and minimally invasive surgery

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 Surgery in surgery-general

**Knowledge of:** The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to general and minimally invasive surgery; principles of effective supervision and program development.

[INTENTIONALLY LEFT BLANK]

**EXHIBIT “B”**  
**AUTHORIZATION TO RELEASE INFORMATION**

**[TO BE ATTACHED]**

## **AUTHORIZATION TO RELEASE INFORMATION**

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

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

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

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Physician

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Date



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

August 21, 2024

**Subject:** Proposed Retroactive Agreement with Patton Sheet Metal Works, Inc., dba Patton Air Conditioning to complete the emergency design and installation of 2 temp air handler units on the B wing roof

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

**Summary:**

Kern Medical requests your Board approve the proposed Retroactive Agreement with Patton Sheet Metal Works, Inc., dba Patton Air Conditioning for emergency design and installation of 2 temp air handler units on the B wing roof at the Kern Medical campus.

The agreement is effective as of June 21, 2024, with construction anticipated to be complete within 5 months of commencement. The projected construction cost for this project is \$624,292, which includes future change orders up to 10% of the original contract price of \$567,538. This cost also includes all mechanical and structural design fees as well as the HCAI emergency administration process.

On June 21, 2024, air handler S-1, which provides tempered air to portions of B and C wing patient care areas, failed and was not repairable. Staff immediately contacted to firms for emergency repair. Patton Air Conditioning, immediately arrived on site with a mechanical engineer and two full crews alternating 12 hour shifts over the weekend to install 2 temporary air handlers on the B wing roof. This quick action insured that the Hospital continued to have tempered air during several days of triple digit weather. In addition, without this immediate temporary repair, the facility would have been placed on diversion in portions of B and C wing.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the Retroactive Agreement, authorize Chairman to sign, and authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price of \$567,538 for approval of up to \$624,292.

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

**THIS SCHEDULE** shall be effective on: June 21, 2024 ("**Effective Date**") and shall terminate upon project completion. Kern County Hospital Authority Department: Construction ("Responsible KCHA Department")

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

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

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

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

Consultant shall provide those services described in Exhibit "A" which is attached hereto and incorporated herein by this reference. Kern County Hospital Authority ("KCHA") shall compensate Consultant for all services to be provided hereunder, including any reimbursement of travel expenses and other costs incurred by Consultant under this Agreement, in an aggregate sum not to exceed \$567,538. Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

(Select one of the following two)

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

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

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

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

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

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

**KERN COUNTY HOSPITAL AUTHORITY**

**APPROVED AS TO CONTENT:**

Responsible KCHA Department

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

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

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

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

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

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

By:  \_\_\_\_\_  
Name: \_\_\_\_\_ Title: **Vice President**  
"Consultant"

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

Date: 8/6/2024

Date: 8/6/24

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

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

**RECITALS**

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

**AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **Rights to Contracted Products.**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT A**  
**SERVICES AND FEES**

# Patton Build. Trust.

ESTIMATE PAGE 1 | 2

Nanette Crawford  
Kern Medical Hospital  
1700 Mount Vernon  
Bakersfield, CA 93306  
July 17, 2024

**Project: Kern Medical Hospital**  
**Quote # 2024202**

Patton AC is pleased to provide a quote to install one 18,000 cfm 100% outside air rental air-handler and one 10,000 cfm return air air-handler. Both systems will have MERV-8 prefilters and MERV-14 final filters. These systems will be connected to the existing power located in the S1 Penthouse. The current return air fan will be utilized to push return air into the 10,000 cfm fan. Temporary hoses (4" dia.) will be run to both air handlers from the existing chilled water branch piping. All fans will be interlocked with the fire shutdown system.

- Install one rental 18,000 cfm air handler. (100% outside air)
- Install one rental 10,000 cfm air handler. (return air)
- Labor, including emergency all-night install and future removal of all rental equipment
- Temporary Chilled Water piping
- Temporary supply and return ducting
- Insulation on supply and return ducting
- Fire shutdown interlock and test
- Crane cost

## Included Costs

➤ Equipment (air handlers, filter boxes, materials)	\$ 87,990.00
➤ Labor (both install and removal)	\$ 86,672.00
➤ Insulating Subcontractor	\$ 8,643.00
➤ Crane Cost (both install and removal)	\$ 55,576.00
➤ Engineering - Structural	\$ 35,850.00
➤ Engineering - Mechanical	\$ 7,500.00
➤ First 28 day rental with shipping	\$ 60,931.00

# Patton Build. Trust.

ESTIMATE PAGE 2 | 2

**The Total Cost to install the rental air handlers with the first 28 day rental,  
labor and materials is ..... \$ 343,162.00**

**Each Additional 28-day rental**

- 28-day rental and includes all labor and materials, weekly filter replacement and one visit per week to check unit's operation.

**Each 28 day rental with weekly inspections and filter replacement is...\$56,094.00**

**Assumptions/Clarifications:**

- Repair or replacement of equipment other than that listed above is not included.
- All maintenance work will be performed during normal business hours.
- This Quote expires in 30 days.

Scott Likins  
HVAC Operations Manager  
Patton Air Conditioning  
slikins@pattonac.com  
559-259-2025

**EXHIBIT A-1**

**IRS FORM W-9**

## EXHIBIT "C"

### Insurance

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

3. Automobile Liability Insurance:

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

4. Professional Liability Insurance (Errors and Omissions):

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

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

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

**I. COMPLIANCE WITH LABOR STANDARDS**

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

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

**II. APPRENTICESHIP PROGRAM**

**1. Compliance Required**

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

**2. Certification of Approval**

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

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

**3. Fund Contributions**

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

**4. Apprenticeship Standards**

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

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

**1. INSURANCE**

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

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

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

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

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

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

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

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

## 2. INDEMNIFICATION

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



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

August 21, 2024

**Subject:** Proposed retroactive Amendment No. 1 to Agreement 100-2023 with Mohammed A.S. Molla, M.D., for professional medical and administrative services as Joint Chair and Director of the Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services

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

**Summary:**

Kern Medical requests your Board retroactively approve Amendment No. 1 to the Agreement with Mohammed A.S. Molla, M.D., for professional medical and administrative services as Joint Chair and Director of Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services.

Dr. Molla is a full-time contact employee in the Department of Psychiatry. He has been a staple at Kern Medical since 2005, initially as a member of the core faculty in the Department. Dr. Molla is board certified in psychiatry-general and child and adolescent psychiatry-subspecialty. His current Agreement is for a term of five years from August 16, 2023 through August 15, 2028.

The proposed Amendment revises the payout date for the annual retention bonus from August 16, 2024 to August 16, 2027. There are no other changes to the Agreement.

Therefore, it is recommended that your Board retroactively approve the Amendment No. 1 to Agreement 100-2023 with Mohammed A.S. Molla, M.D., for professional medical and administrative services as Joint Chair and Director of the Department of Psychiatry for Kern Medical and Kern County Behavioral Health and Recovery Services for the period August 16, 2023 through August 15, 2028, revising the payout date for the annual retention bonus from August 16, 2024 to August 16, 2027, effective August 15, 2024, and authorize the Chairman to sign.

**AMENDMENT NO. 1  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Mohammed A.S. Molla, M.D.)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Mohammed A.S Molla, M.D. (“Physician”).

**RECITALS**

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #100-2023, dated August 16, 2023) (the “Agreement”), for the period August 16, 2023 through August 15, 2028, whereby Physician provides professional medical and administrative services in the Department of Psychiatry and teaching services to resident physicians employed by Authority; 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 15, 2024;

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 5, Compensation Package, paragraph 5.10, Retention Bonus, shall be deleted in entirety and replaced with the following:

“5.10 Retention Bonus.

5.10.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings, payable within ten (10) days of August 16, 2027, and each August 16 thereafter during the Term if the conditions for Physician to receive the retention bonus are met.

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


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

2. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
3. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
4. 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.
5. 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.

PHYSICIAN

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

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority

Amend1.Molla.072924



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

August 21, 2024

**Subject:** Kern County Hospital Authority Chief Financial Officer Report – June 2024

**Recommended Action:** Receive and File

**Summary:**

**Kern Medical Operations:**

Kern Medical key performance indicators:

- Operating gain of \$220,158 for June is \$208,511 more than the June budget of \$11,647 and \$40,749 more than the \$179,409 average over the last three months
- EBIDA of \$1,664,186 for June is \$549,169 more than the June budget of \$1,115,016 and \$183,732 less than the \$1,847,918 average over the last three months
- Average Daily Census of 167 for June is 6 more than the June budget of 161 and 3 more than the 164 average over the last three months
- Admissions of 835 for June are 33 more than the June budget of 802 and 19 more than the 816 average over the last three months
- Total Surgeries of 473 for June are 75 less than the June budget of 548 and 41 less than the 514 average over the last three months
- Clinic Visits of 17,300 for June are 1,407 more than the June budget of 15,893 and 2,356 less than the 19,656 average over the last three months. The total includes 1 COVID-19 vaccination visit

The following items have budget variances for the month of June 2024:

**Patient Revenue:**

Gross patient revenue has an 11% favorable budget variance for the month and an 9% favorable variance on a year-to-date basis. The large variance is mainly due to a 3.2% charge master price increase that became effective on July 1, 2023. Kern Medical expects strong patient census levels and consistently high gross patient revenue for FY 2024.

**Indigent Funding Revenue:**

Indigent funding has a favorable budget variance for the month and on a year-to-date basis. Adjustments have been posted to true-up FY 2024 Rate Range Intergovernmental Transfer (IGT) funding based on favorable changes in estimates for this program. Also, additional revenue has been recognized based on a favorable change in estimate for the FY 2015 Medi-Cal waiver settlement and the FY 2023 Global Payment Program (GPP). The year-to-date favorable variance is also due to adjustments posted to true-up FY 2023 Correctional Medicine revenue and to adjust FY 2024 Correctional Medicine revenue based on a reconciliation of costs for these services.

**Other Operating Revenue:**

Other operating revenue is over budget for the month due to the receipt of Medi-Cal Administrative Activities (MAA) funds that reimburse Kern Medical for Medi-Cal financial counseling services provided to patients. On a year-to-date basis other operating revenue is under budget. Items such as medical education funding, grants, and Proposition 56 funding are received quarterly or otherwise periodically. Therefore, actual month-to-date and year-to-date revenue compared to the budget will fluctuate throughout the year.

**Other Non-Operating Revenue:**

Other non-operating revenue is over budget for the month due to higher-than-average revenue received for physician services provided out-of-network. On a year-to-date basis, there is a favorable budget variance due to the receipt of \$64 thousand of COVID-19 employee retention funds in July 2023. The COVID-19 retention bonuses were paid out to employees in July and were included in salaries expense.

**Salaries Expense:**

Salaries expense is \$27.3 million over budget on a year-to-date basis, or 13%, because of several factors including:

- A decrease in nurse registry expense corresponds with an increase in salary expense for nursing.
- Management and administrative positions previously filled by Meridian Healthcare Partners and by Cantu Management were hired by Kern Medical and became full-time employees of the hospital. These staff members fill the same administrative and management positions as before, but now as salaried employees of Kern Medical. A corresponding decrease in other professional fees contracted services offsets this shift in personnel.

**Nurse Registry Expense:**

Nurse registry expense is 16% under budget for the month and 10% under budget year-to-date. Kern Medical has substantially decreased its usage of contract nurse services. In addition, the hourly rates charged by the staffing agencies that provide registry nurse services are significantly lower than at various COVID-related peaks. Staffing agencies were charging higher-than-average costs per hour due to high demand for nursing staff during the pandemic. Kern Medical plans to continue its need for registry services as appropriate to staff for patient needs.

**Medical Fees:**

Medical fees are 23% over budget for the month and 15% over budget on a year-to-date basis because of higher-than-average monthly fees paid to Regional Anesthesia Associates, Acute Care Surgery Medical Group, and the Valley Neurosurgery and Neurorestoration Center.

**Other Professional Fees:**

Other professional fees have a favorable budget variance for the month and on a year-to-date basis. Prior to September 2023, Kern Medical administrative and management positions were filled by Meridian Healthcare Partners and by Cantu Management Group. These Meridian and Cantu positions were hired by Kern Medical and became full-time employees of the hospital. These staff members fill the same administrative and management positions as before, but now as salaried employees of Kern Medical. Therefore, throughout FY 2024 other professional fees will be under budget. However, this favorable budget variance will be offset by a corresponding increase in salaries and benefits expenses.

**Supplies Expense:**

Supplies expense is over budget for the month due to year-end adjustments to true-up the inventory of supplies in stock. On a year-to-date basis supplies expense is under budget due to lower-than-average costs for pharmaceuticals and for general medical supplies.



**Purchased Services:**

Purchased services are over budget for the month and on a year-to-date basis because of higher-than-average resident education expenses and higher than average security expenses. On a year-to-date basis, high ambulance fees also contribute to the unfavorable budget variance.

**Other Expenses:**

Other expenses are over budget for the month and on a year-to-date basis due to higher-than-average repairs and maintenance costs and higher than average utilities costs.

**Interest Expense:**

Interest expense is over budget month-to-date and year-to-date due to higher than anticipated pension obligation bond (POB) interest. In addition, a change in the treatment of accounting for leases under GASB 87 was implemented in 2022 and requires leases to be set up as assets at fair market value and amortized over time. Corresponding right-of-use liabilities are also set up for leases with applicable interest expense accrued. The net effect of the implementation of GASB 87 is minimal. The decrease in lease expense under the other expenses section of the income statement is offset by increases in amortization expense and in interest expense.

**Depreciation and Amortization Expense:**

Depreciation and amortization expenses are over budget for the month and on a year-to-date basis because of the implementation of GASB 87. Please see the interest expense section of this memo for an explanation of how leases are accounted for under GASB 87 and how it may affect amortization expense.

**Balance Sheet: Long-Term Liabilities:**

Kern Medical's FY 2023 financial statements audit was completed in January 2024 and the FY 2023 reporting period was closed. The resulting adjustments for long-term liabilities made after fiscal year-ended June 30, 2023 are now reflected in the monthly balance sheet reporting for FY 2024. Among the entries is a \$61.2 million unfavorable accounting adjustment for the unfunded pension obligation. The adjustment is supported by the year-end actuarial report received from KCERA that was based on market conditions at the time the report was compiled. This accounting adjustment does not alter financial profitability or cash position.

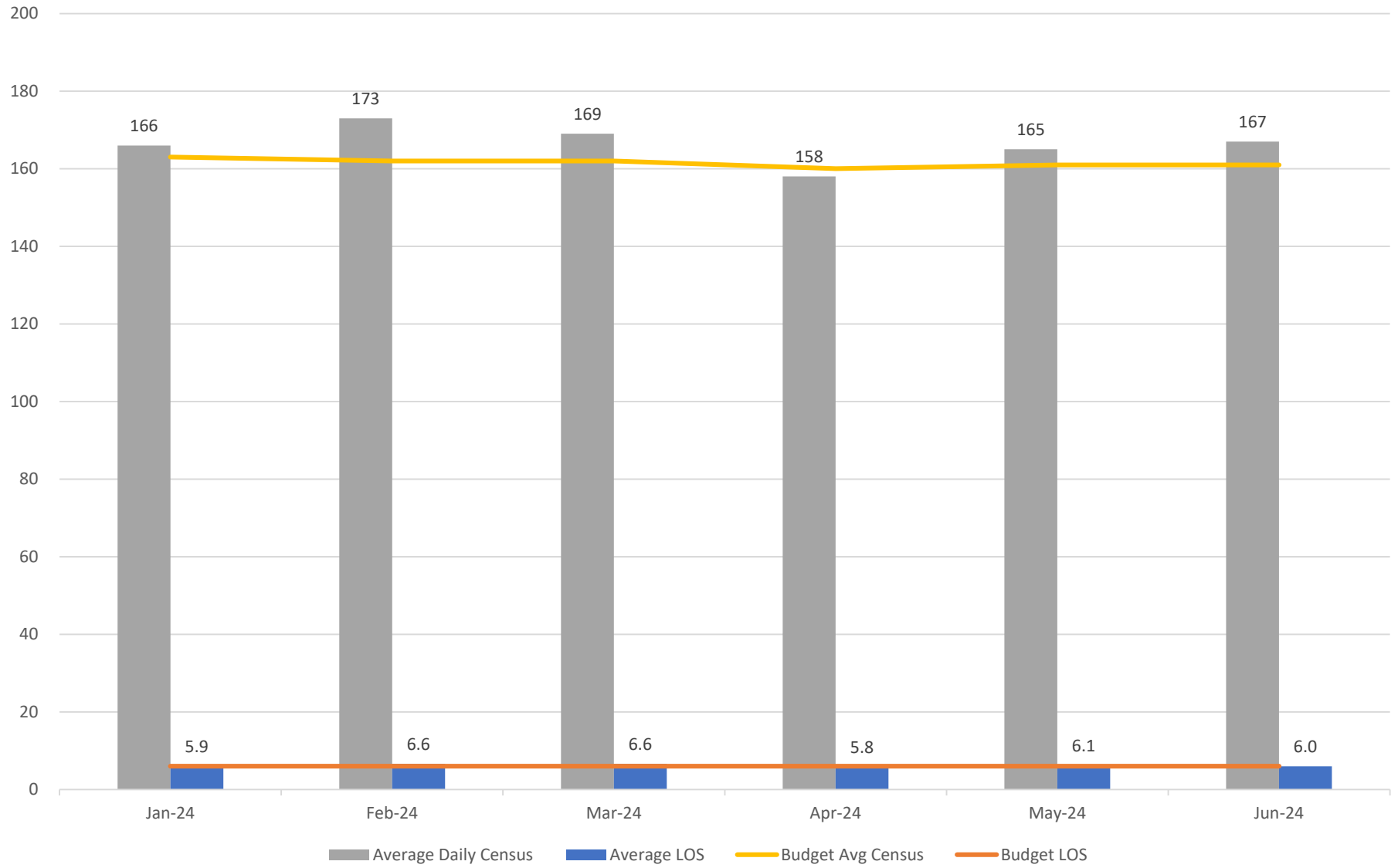
In addition to the unfavorable change for the unfunded pension liability, other-long term liabilities reported for fiscal year 2024 total \$81,830,738, up from the prior year amount of \$76,191,211. The unfavorable change is due in part to an \$4.9 million unfavorable change in right-of-use liabilities to comply with the new GASB 87 rules for lease accounting referenced under the interest expense section of this memo.

Other notable balance sheet items are the favorable changes in the FY 2015 and the FY 2017 Medi-Cal Waiver accruals. The FY 2015 account has carried a \$23.8 million liability balance for many years. The FY 2017 account has carried a \$2.4 million liability. The state has now settled both waiver years and the corresponding liability for these two accounts has been adjusted to zero.

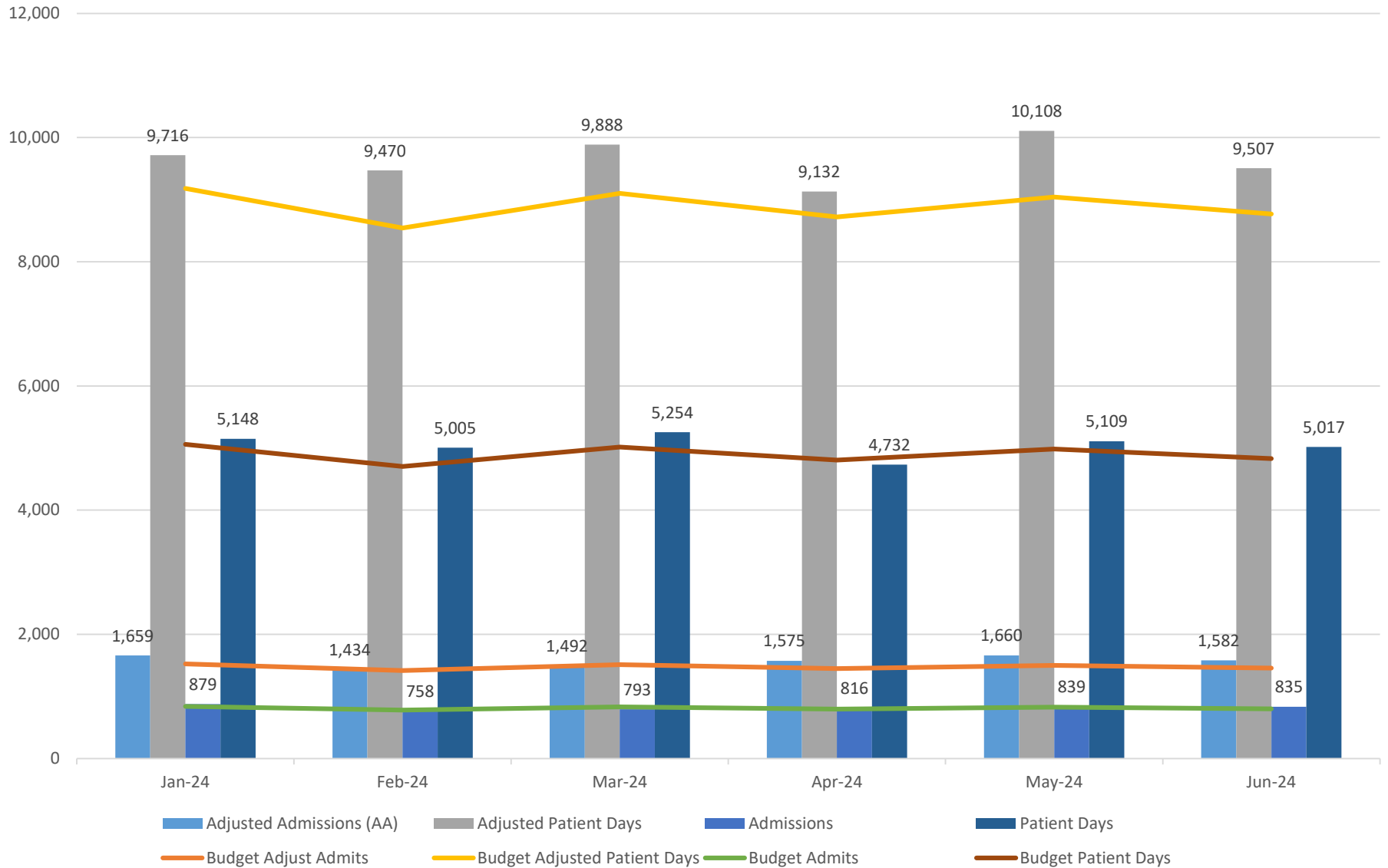


## **BOARD OF GOVERNORS' REPORT KERN MEDICAL – JUNE 2024**

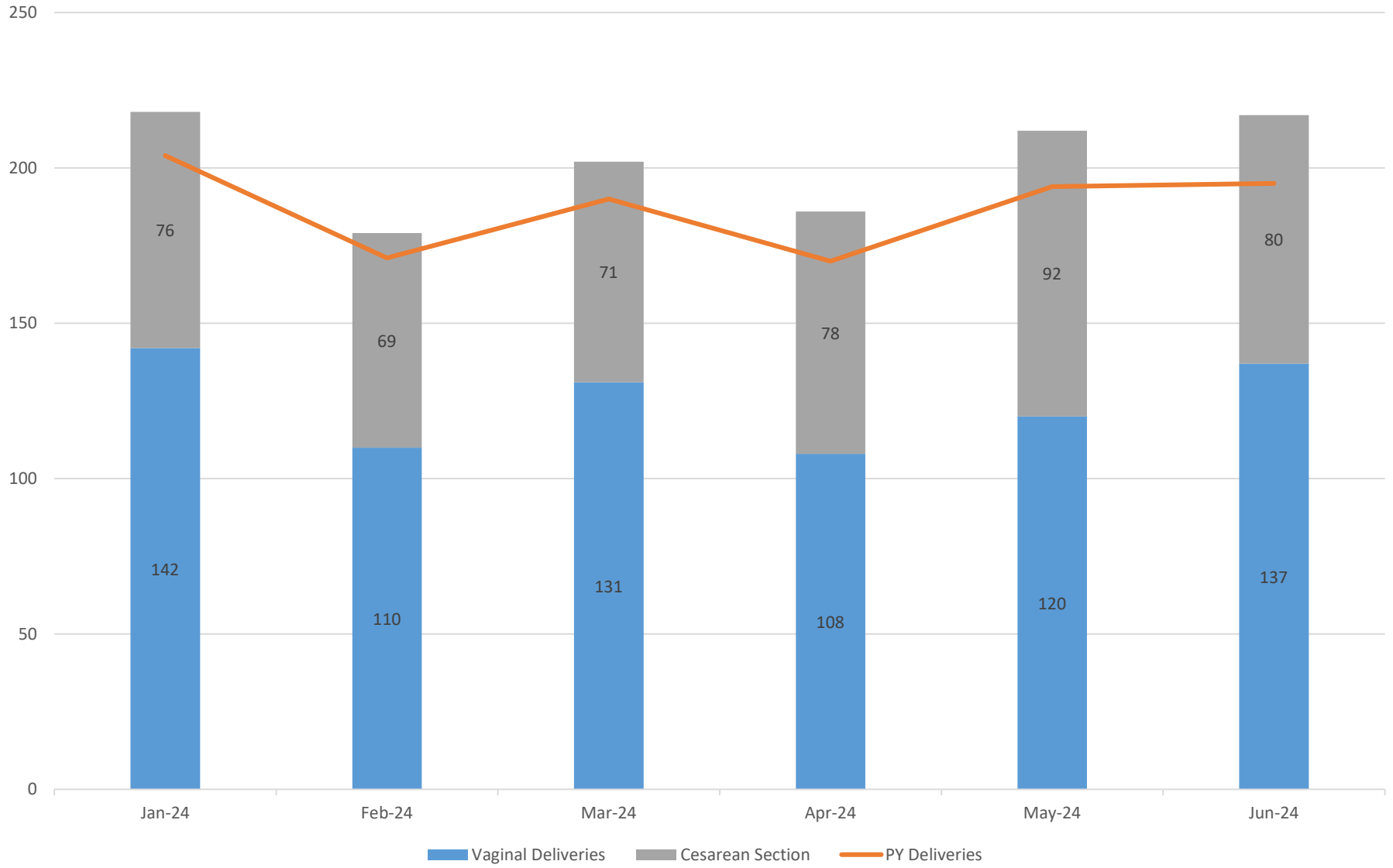
## Census & ALOS



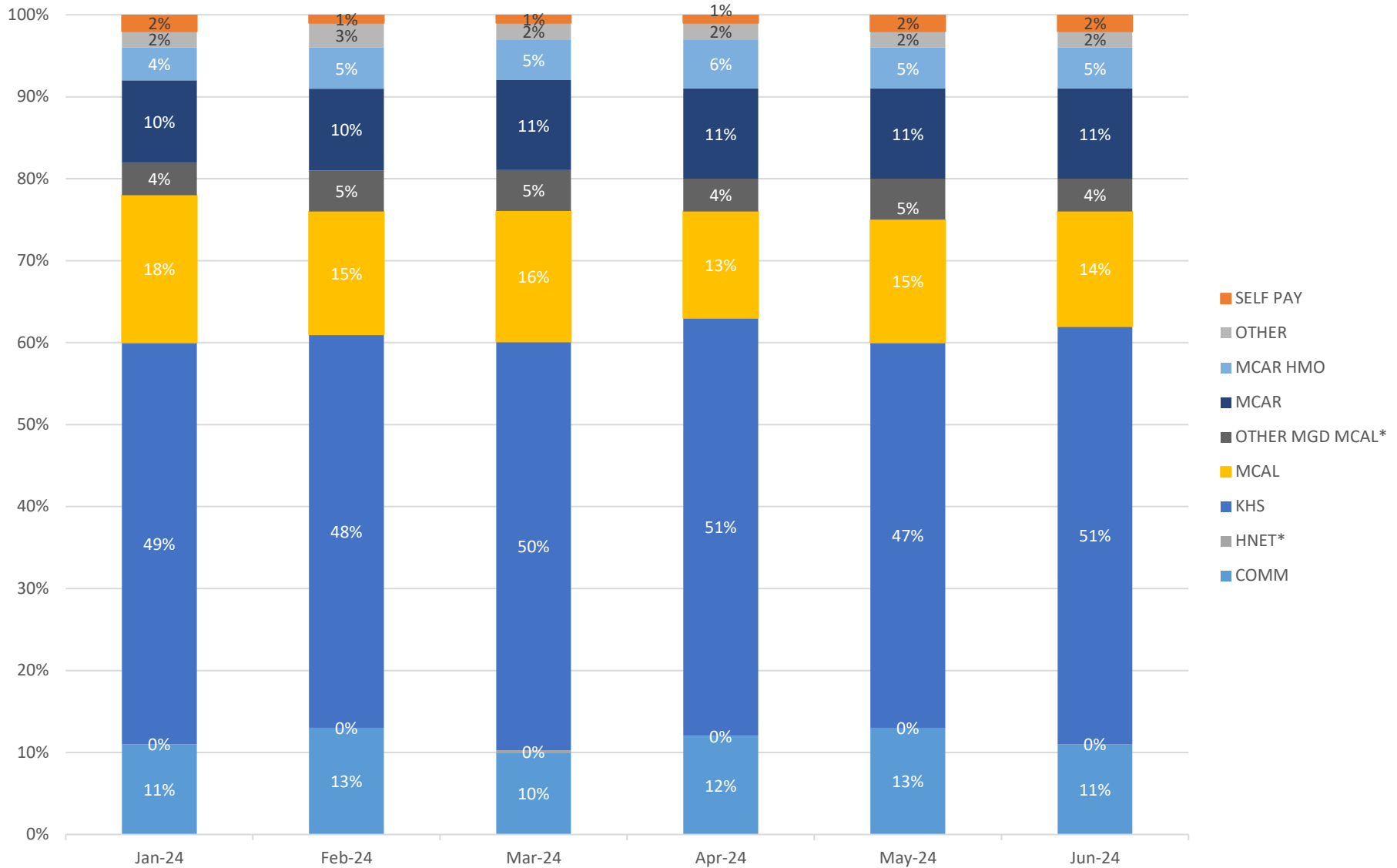
## Hospital Volumes



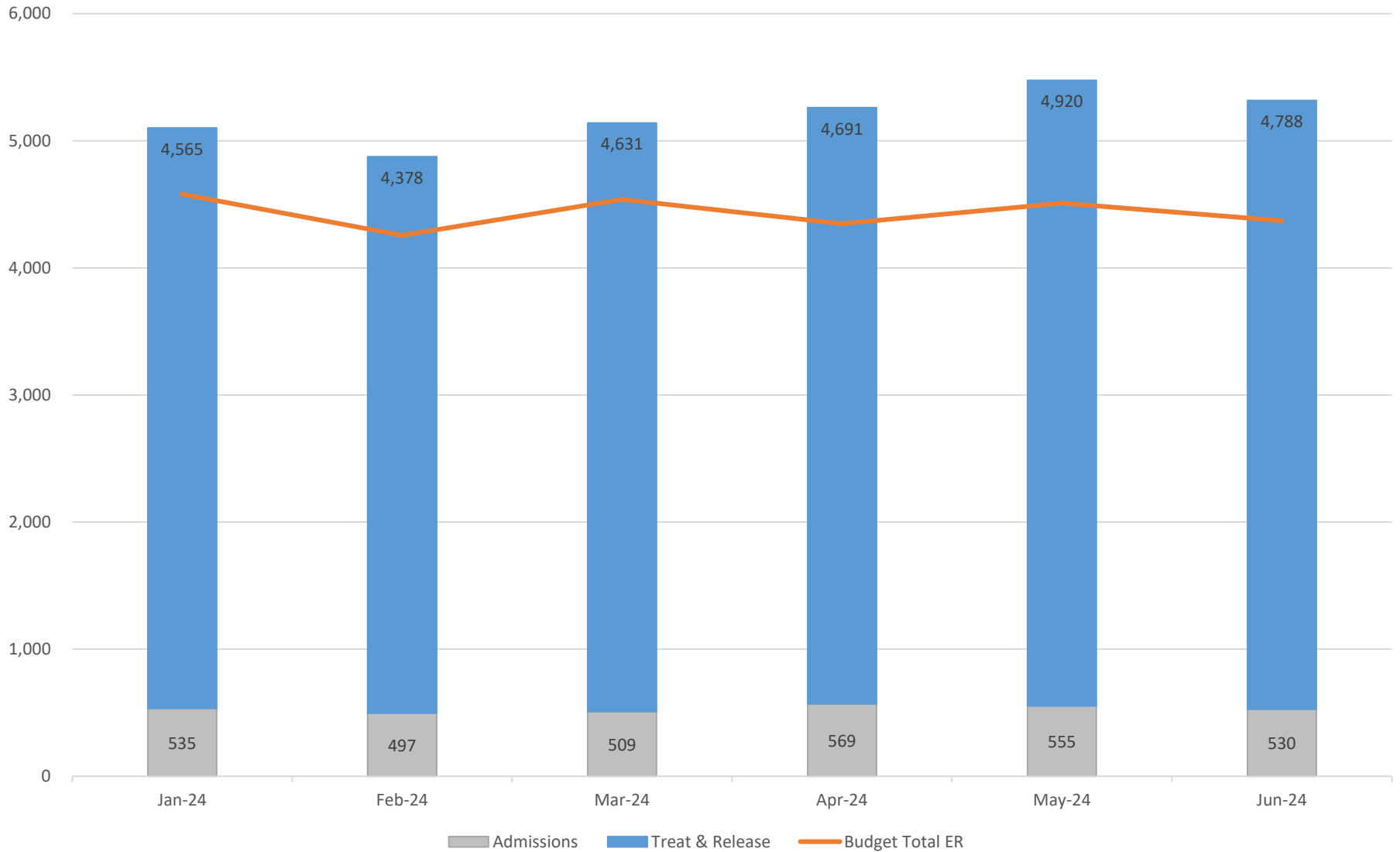
## Deliveries



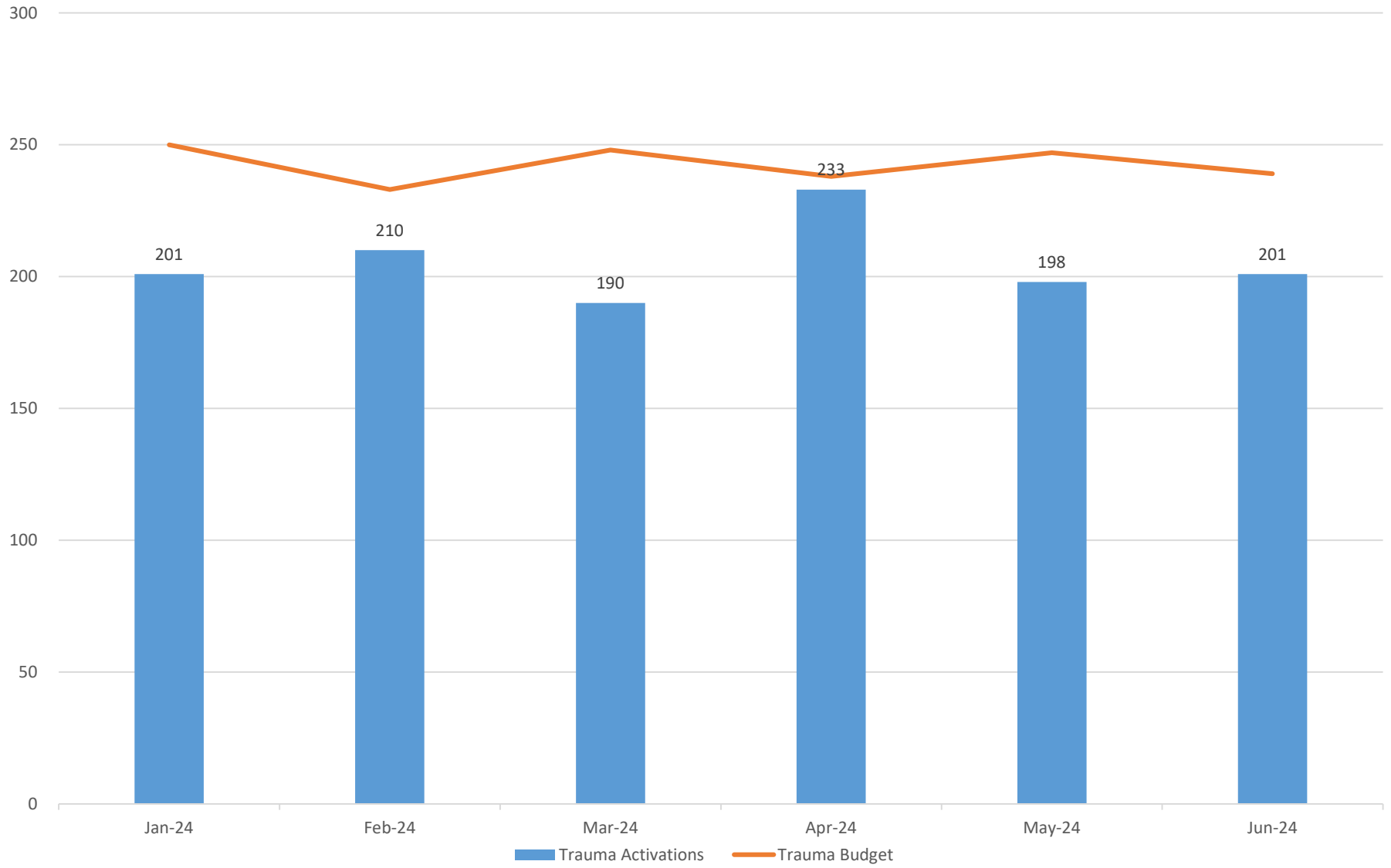
## PAYER MIX



## Emergency Room Volume

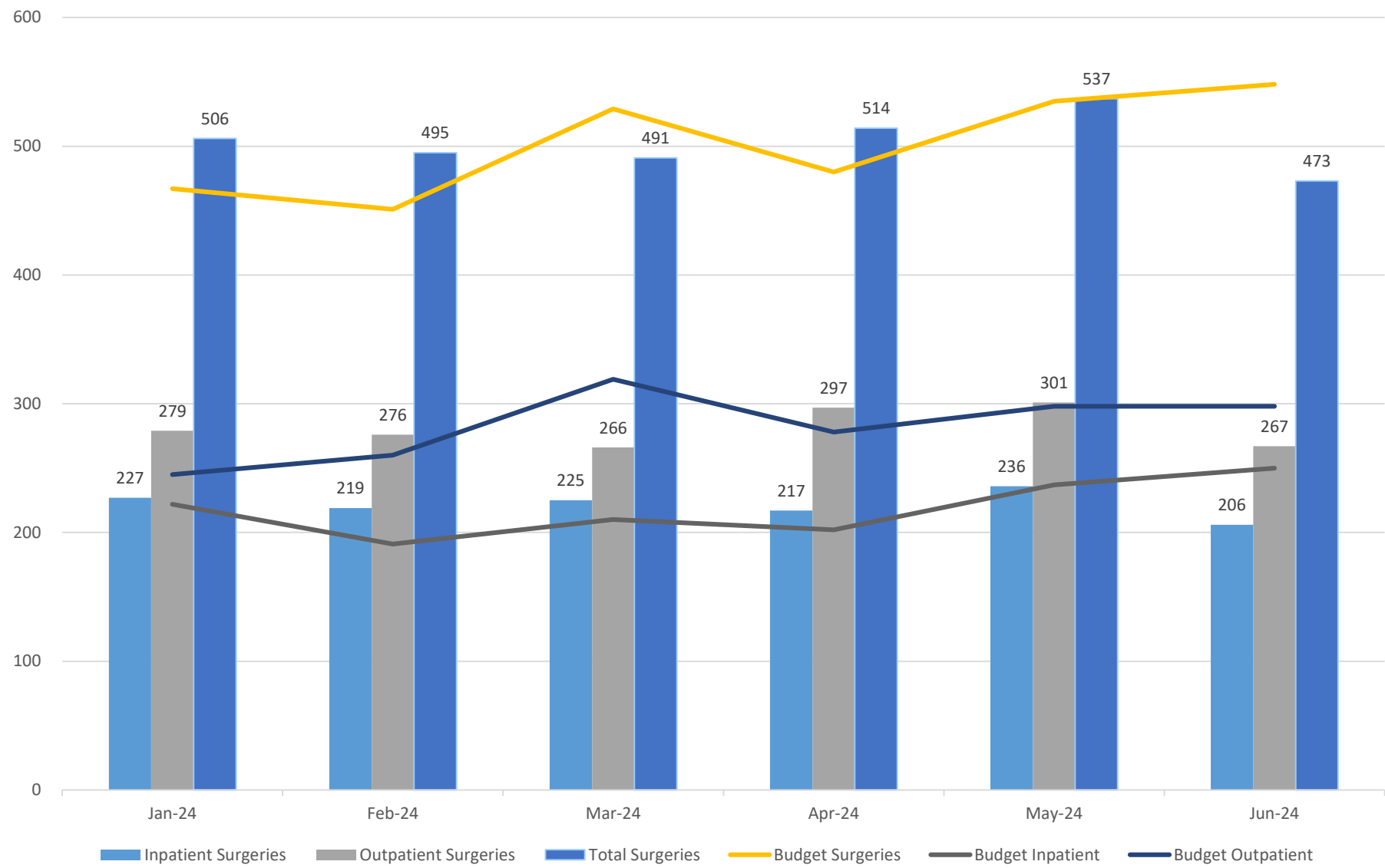


## Trauma Activations

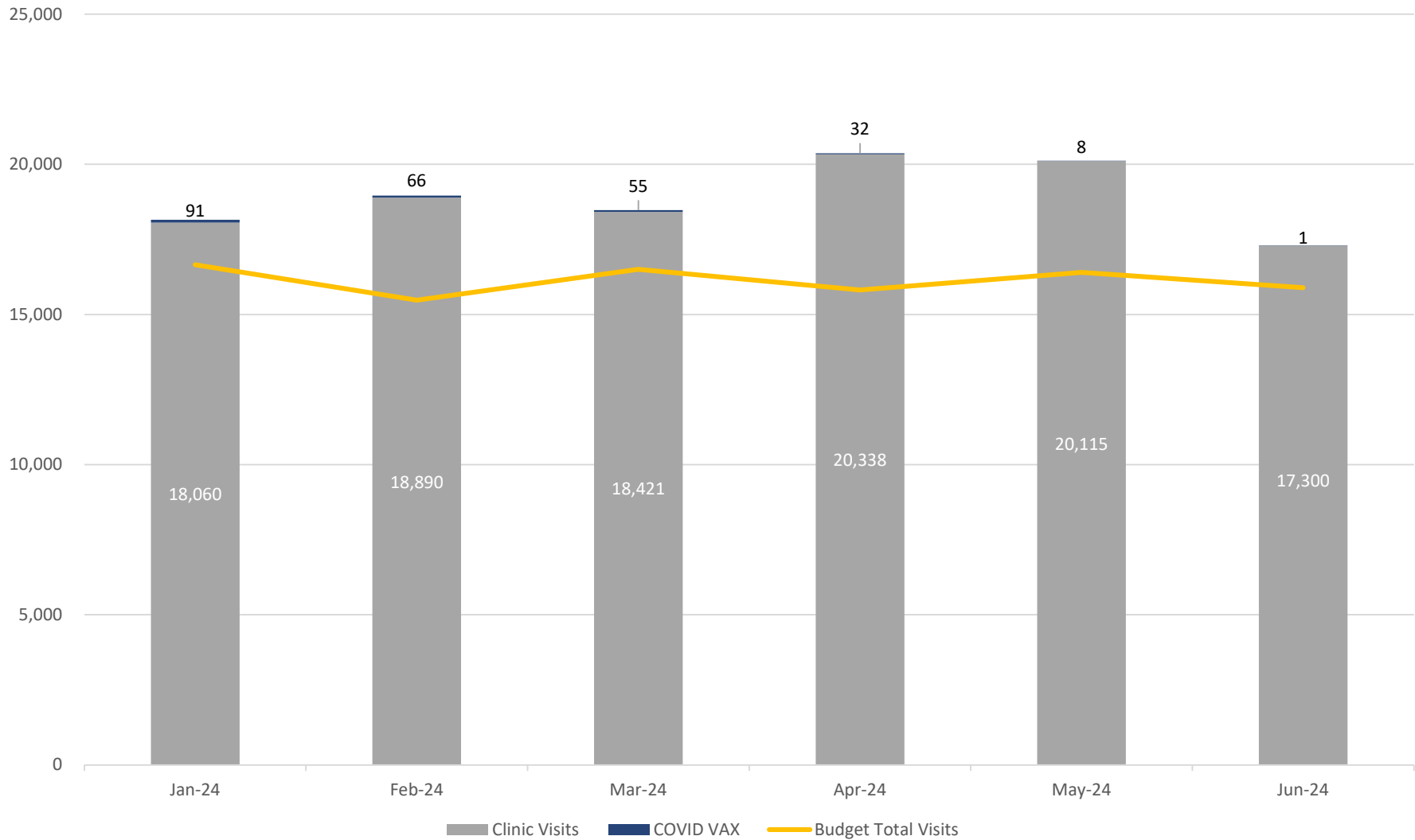




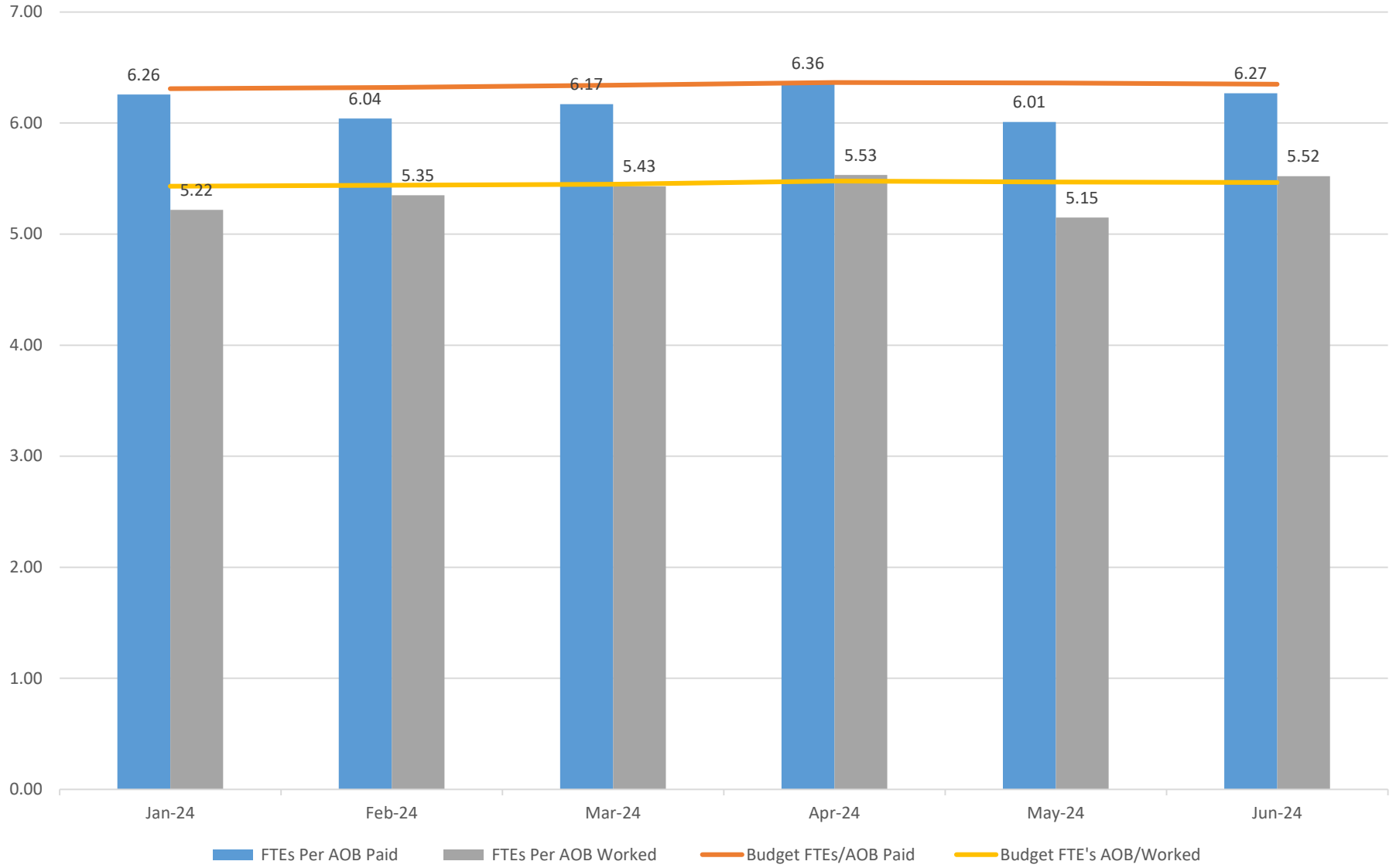
Surgical Volume



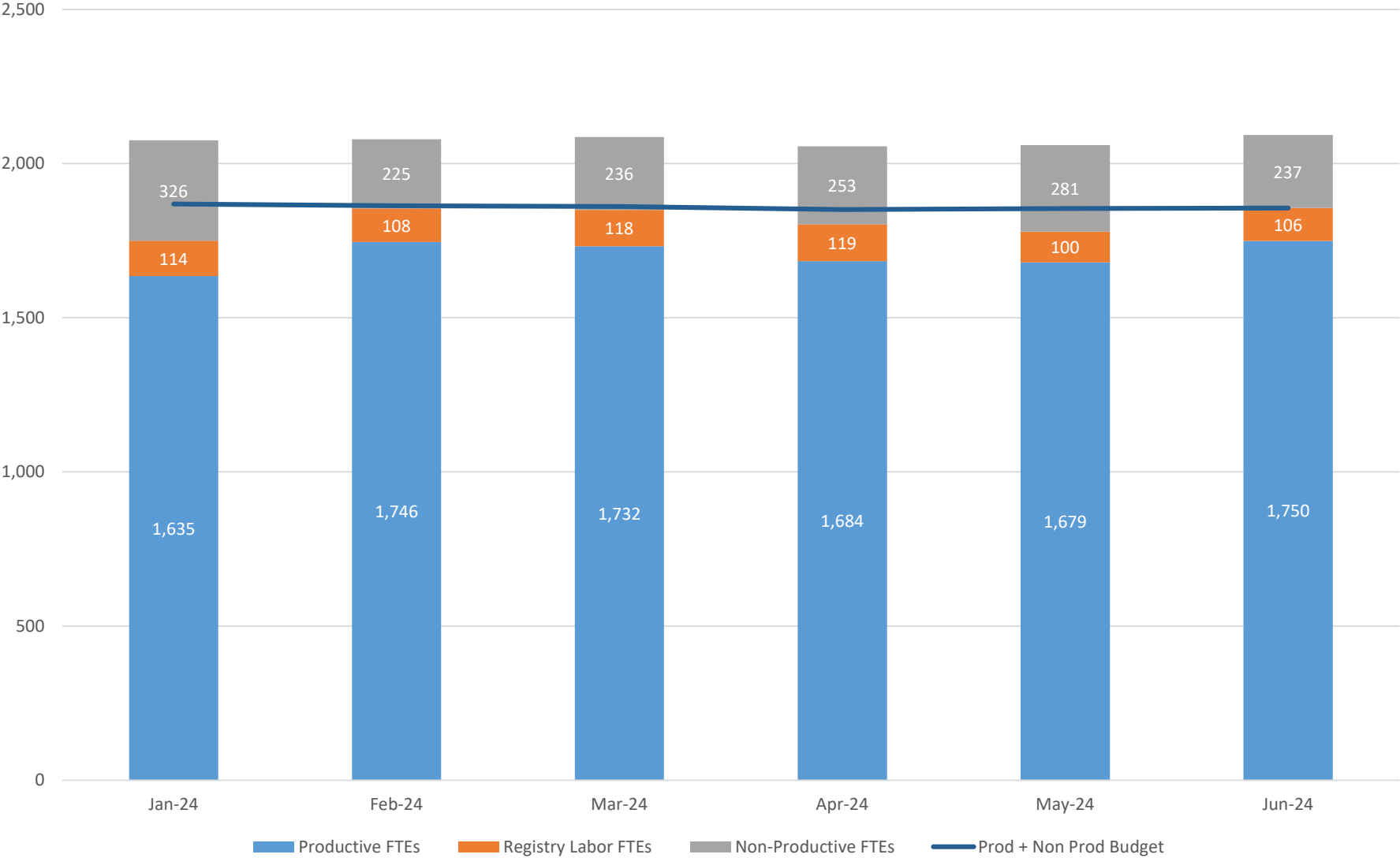
## Clinic Visits



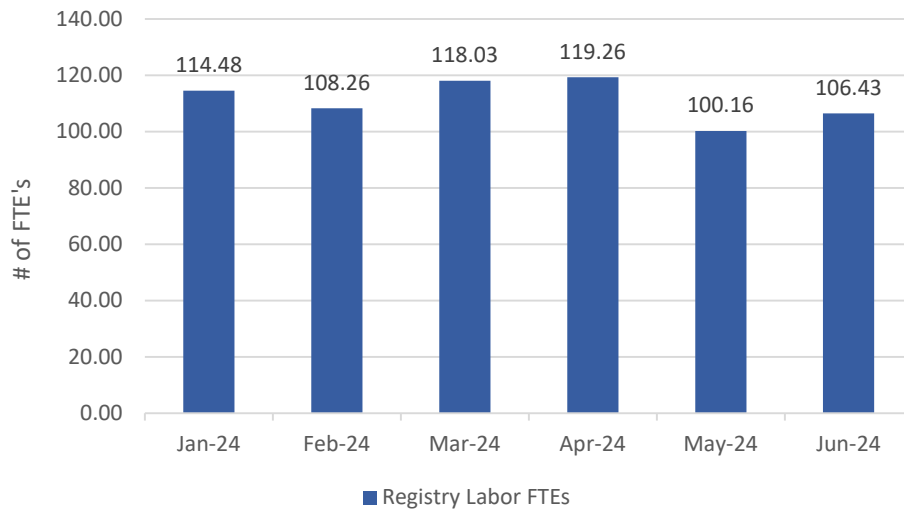
## Labor Metrics



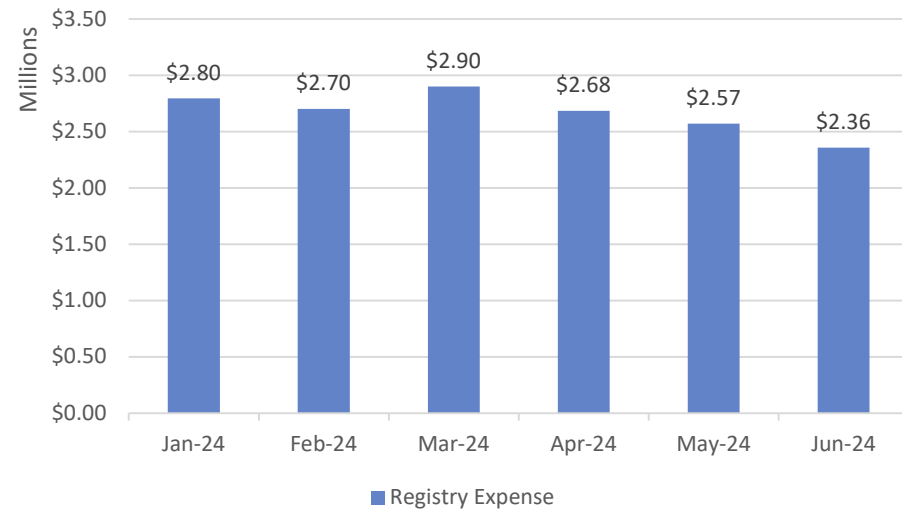
Productivity



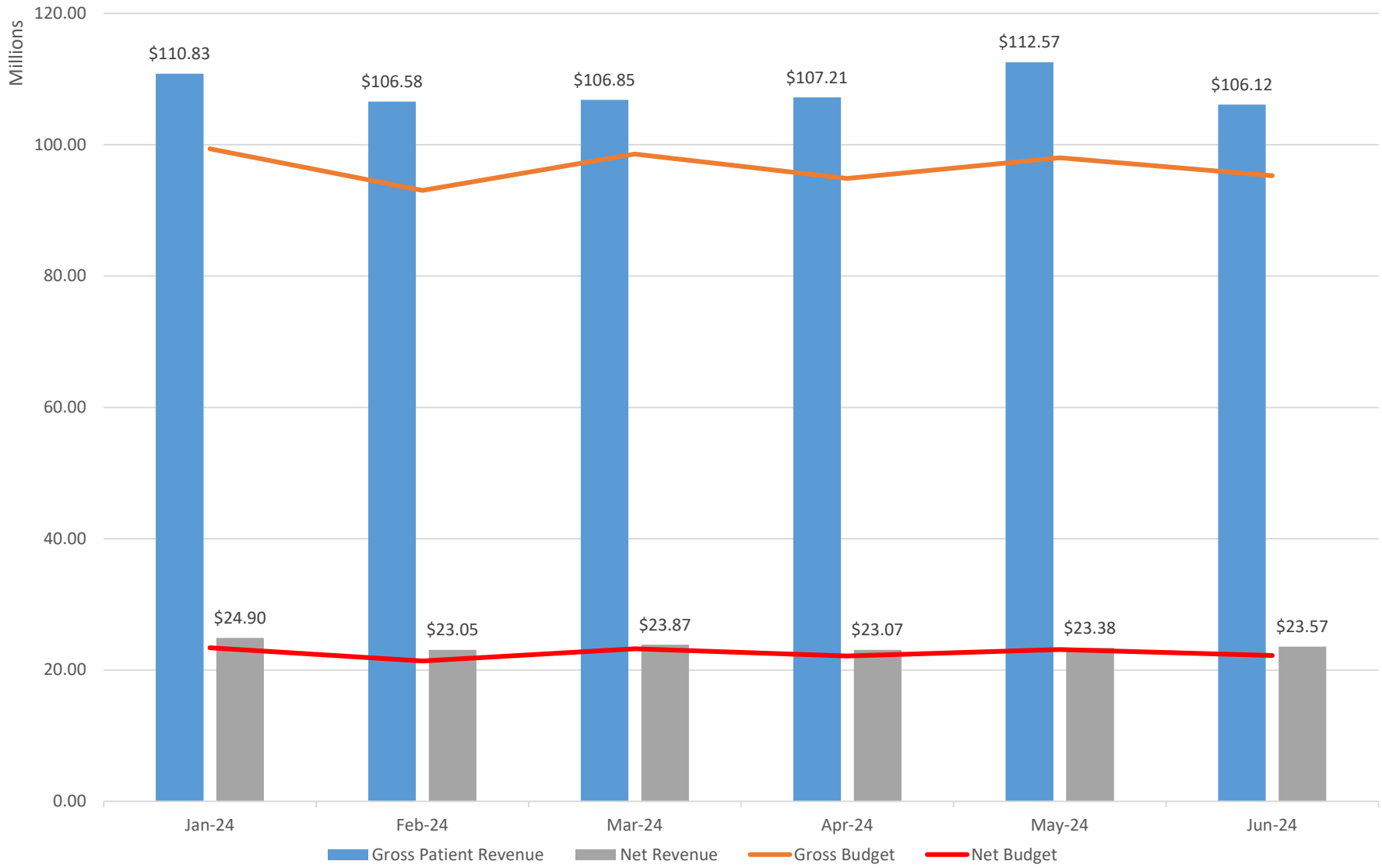
Registry FTE's



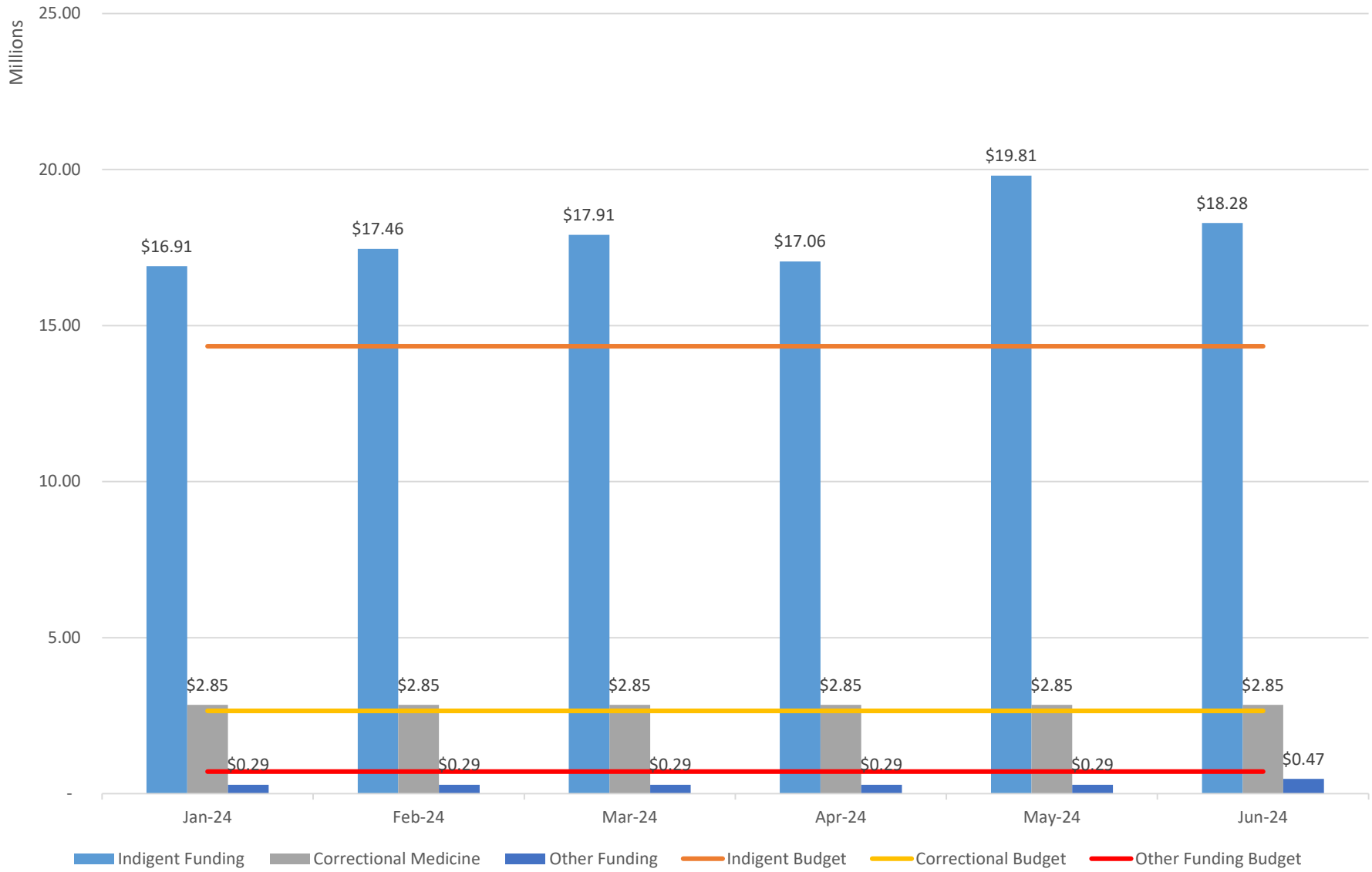
Registry Expense



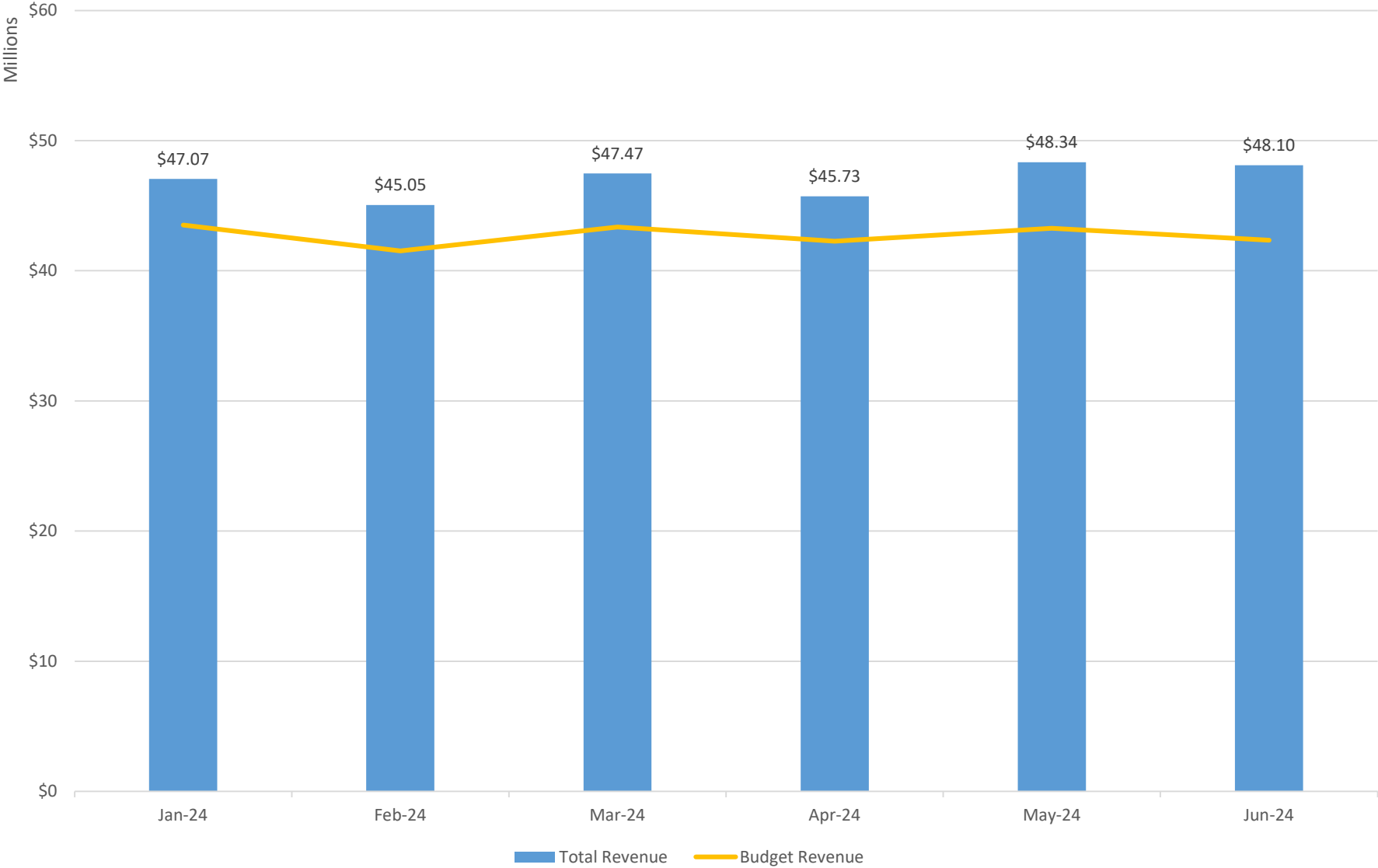
## Patient Revenue



## Indigent & Correctional Revenue

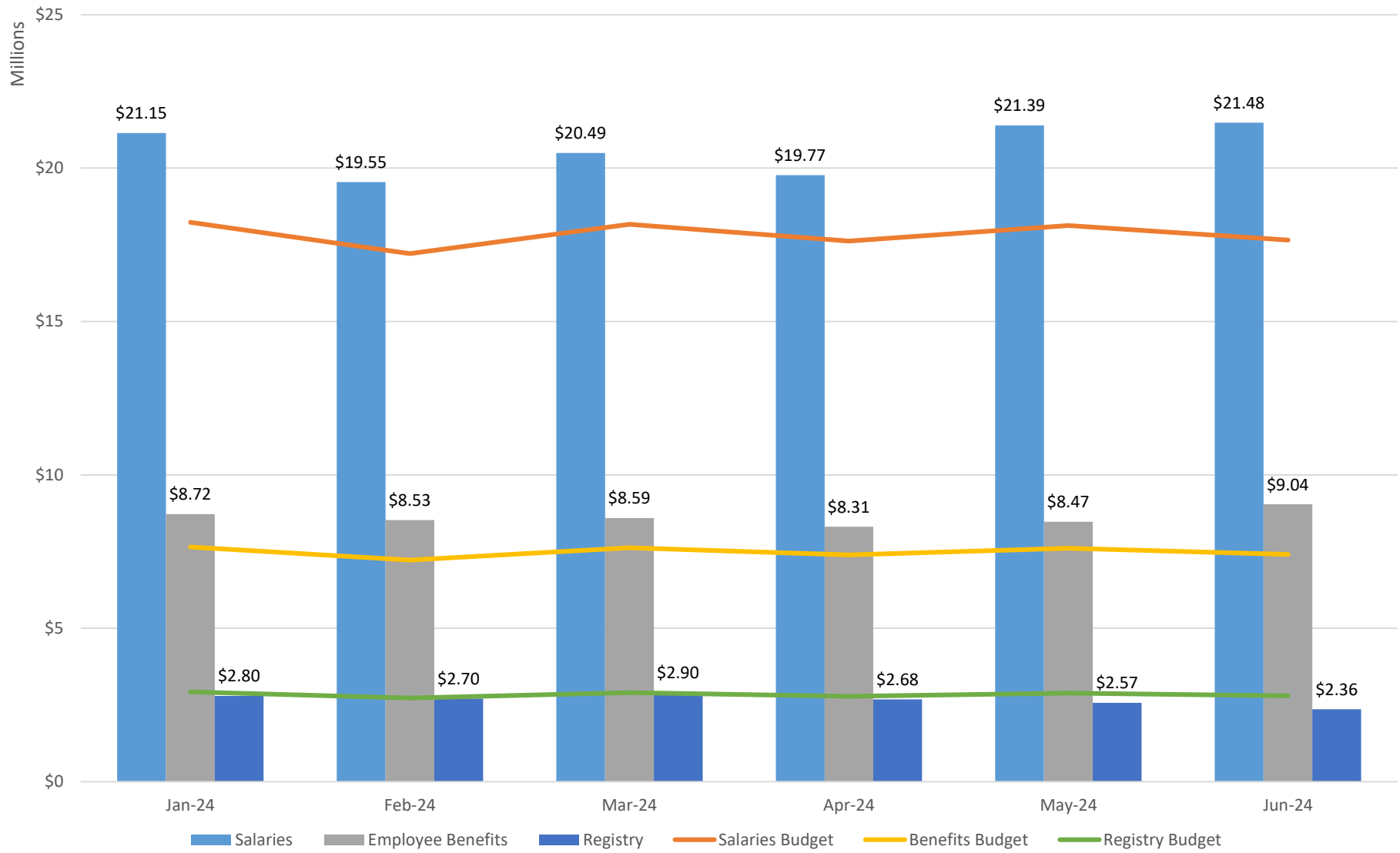


Total Revenue

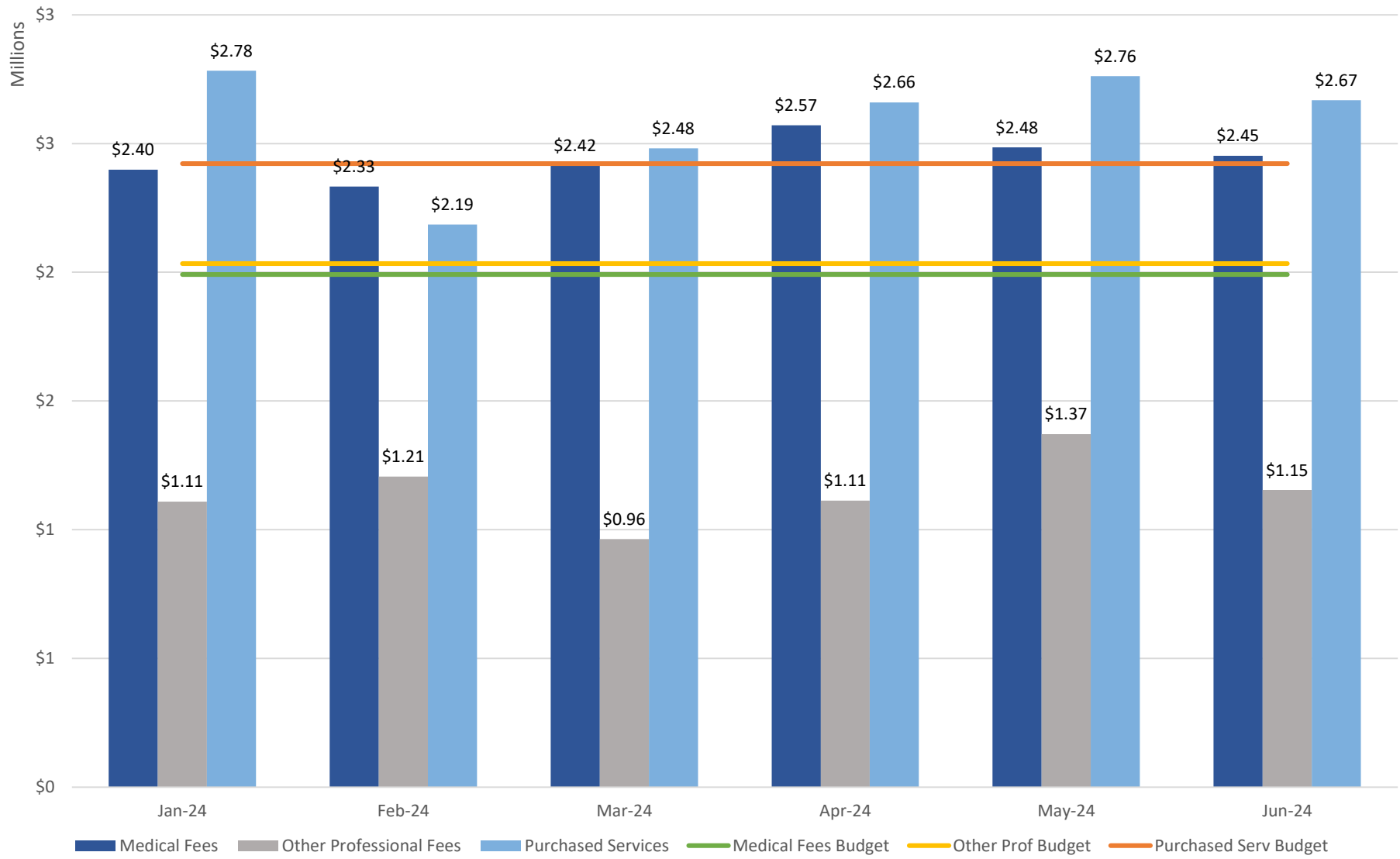




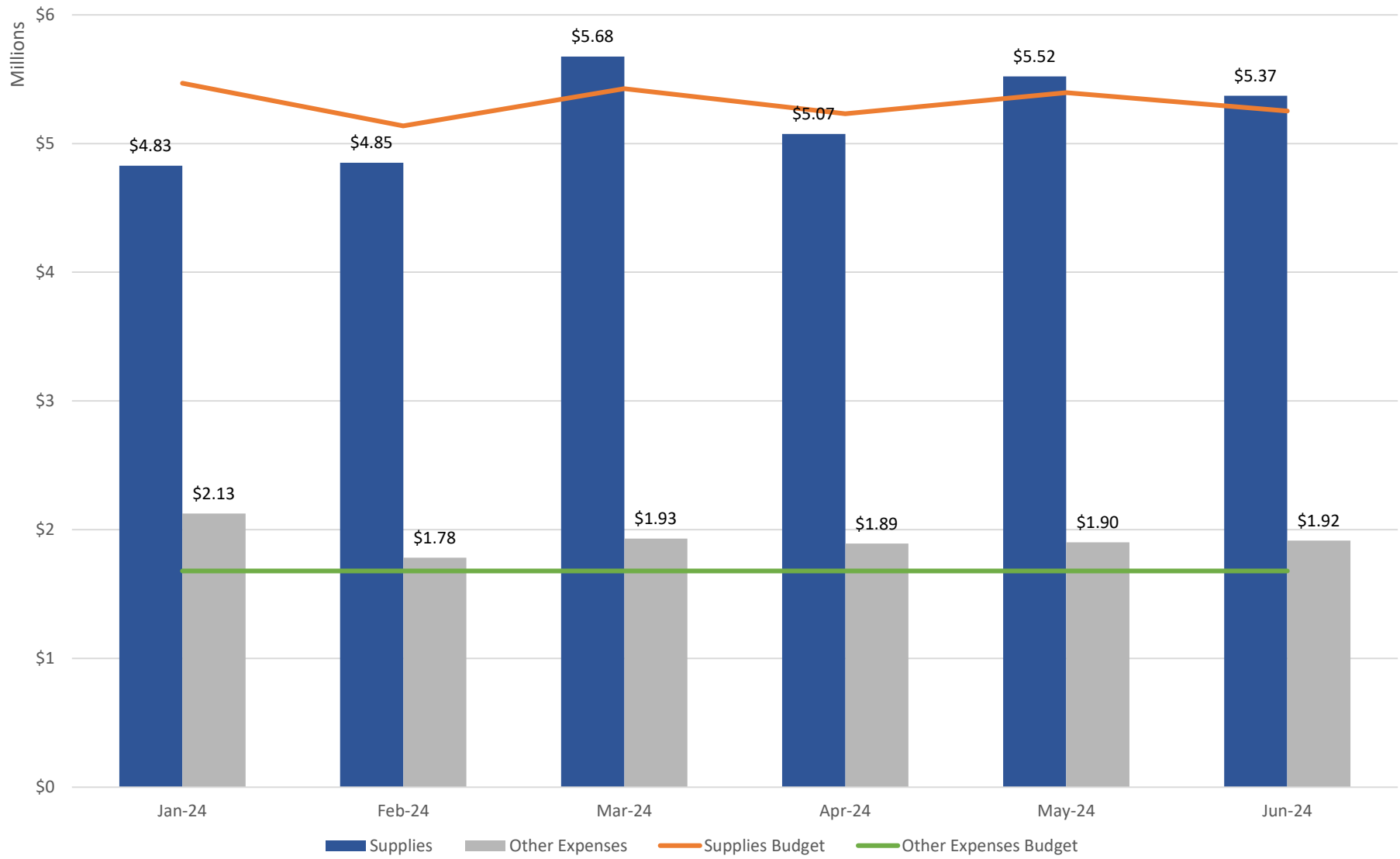
## Expenses



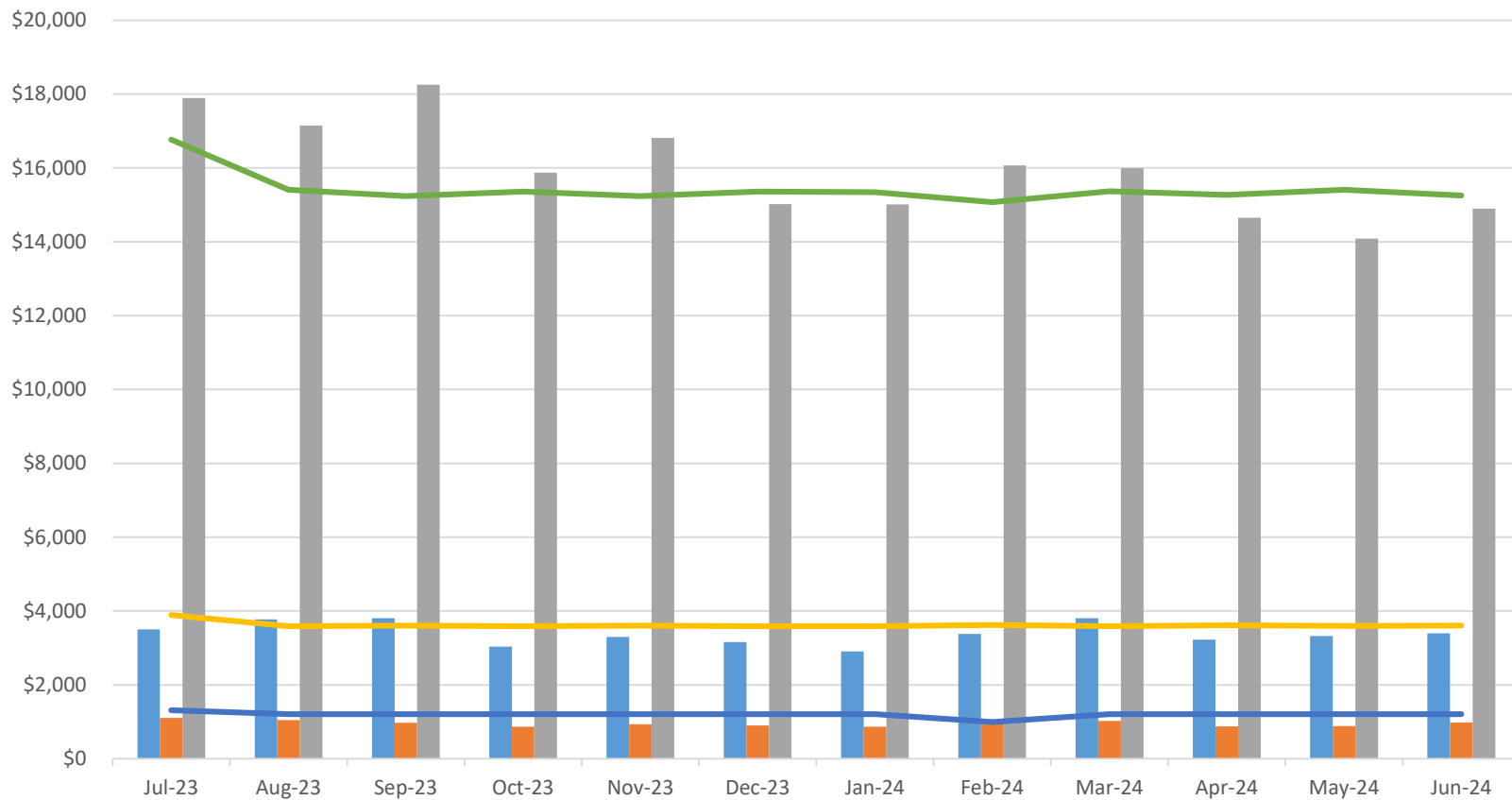
## Expenses



## Expenses

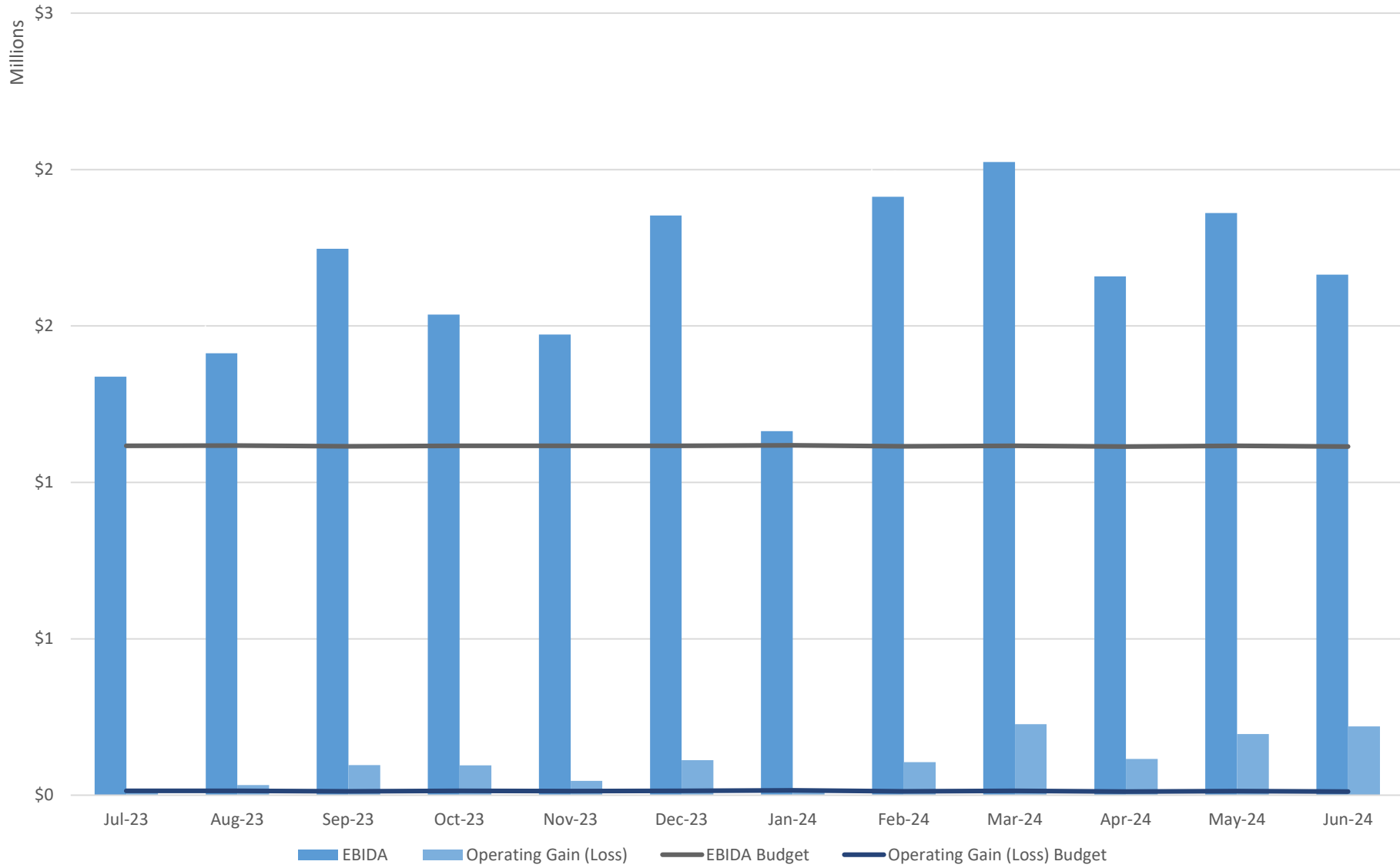


## Operating Metrics

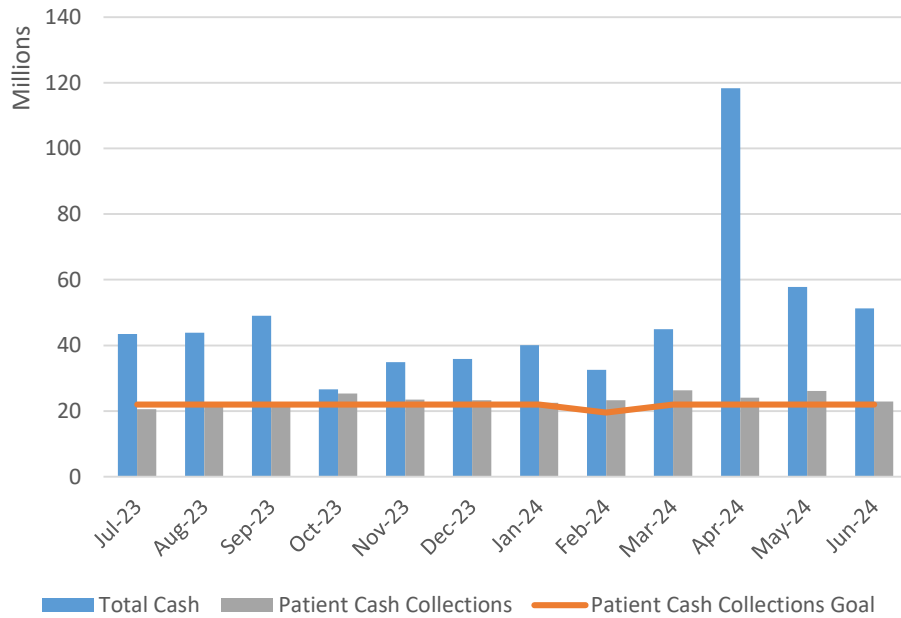


	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24
Supply Expense per AA	\$3,502	\$3,775	\$3,809	\$3,038	\$3,303	\$3,161	\$2,910	\$3,383	\$3,803	\$3,223	\$3,327	\$3,394
Pharm Cost per AA	\$1,104	\$1,047	\$978	\$866	\$932	\$904	\$865	\$1,011	\$1,023	\$877	\$885	\$986
Net Revenue Per AA	\$17,893	\$17,150	\$18,258	\$15,875	\$16,817	\$15,020	\$15,012	\$16,073	\$15,992	\$14,649	\$14,086	\$14,898
Budget Supp/AA	\$3,891	\$3,590	\$3,606	\$3,589	\$3,606	\$3,589	\$3,589	\$3,621	\$3,590	\$3,610	\$3,596	\$3,608
Budget Pharm/AA	\$1,310	\$1,210	\$1,210	\$1,210	\$1,210	\$1,210	\$1,211	\$999	\$1,210	\$1,210	\$1,211	\$1,210
Budget Net Rev/AA	\$16,765	\$15,413	\$15,234	\$15,361	\$15,235	\$15,361	\$15,341	\$15,077	\$15,368	\$15,272	\$15,407	\$15,252

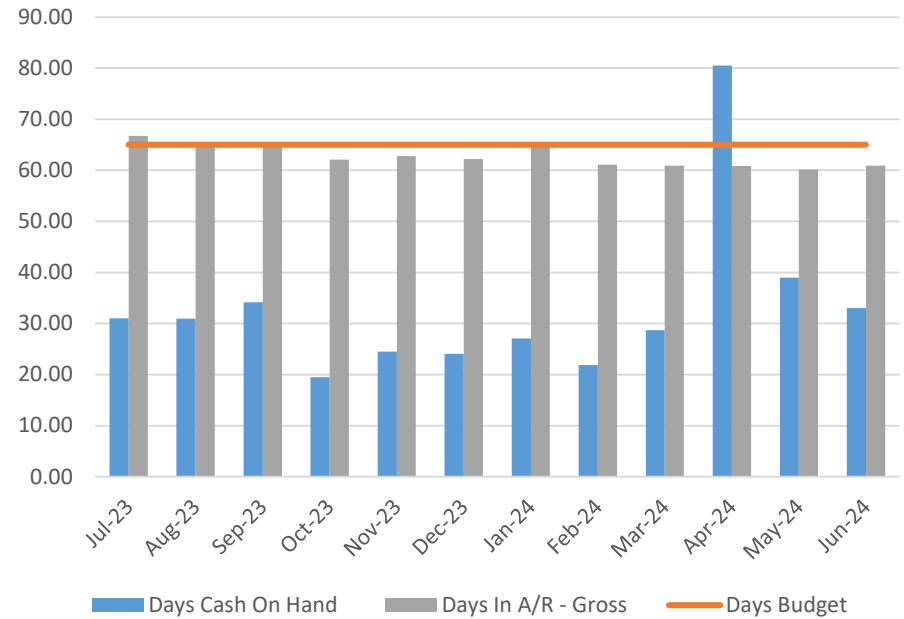
## EBIDA Rolling Year



### Cash Rolling Year



### AR Days Rolling Year



**KERN MEDICAL**  
**3-Month Trend Analysis: Revenue & Expenses**  
June 30, 2024

				BUDGET	VARIANCE	PY
	APRIL	MAY	JUNE	JUNE	POS (NEG)	JUNE
<b>Gross Patient Revenue</b>	\$ 107,205,718	\$ 112,567,880	\$ 106,117,460	\$ 95,296,707	11%	\$ 97,404,066
Contractual Deductions	(84,138,267)	(89,185,577)	(82,543,254)	(73,090,318)	13%	(79,948,369)
<b>Net Revenue</b>	23,067,451	23,382,303	23,574,205	22,206,389	6%	17,455,697
Indigent Funding	17,055,758	19,805,758	18,283,151	14,338,567	28%	14,208,613
Correctional Medicine	2,847,714	2,847,714	2,847,714	2,651,620	7%	2,608,481
County Contribution	285,677	285,211	285,211	282,447	1%	285,211
Incentive Funding	0	0	186,406	425,000	(56%)	0
<b>Net Patient Revenue</b>	43,256,599	46,320,986	45,176,687	39,904,023	13%	34,558,001
Other Operating Revenue	2,458,814	2,007,284	2,911,658	2,428,863	20%	6,201,973
Other Non-Operating Revenue	11,076	9,318	14,726	13,060	13%	13,499
<b>Total Revenue</b>	45,726,489	48,337,589	48,103,071	42,345,947	14%	40,773,473
<b>Expenses</b>						
Salaries	19,770,883	21,394,562	21,483,131	17,652,442	22%	18,074,740
Employee Benefits	8,305,515	8,470,106	9,037,265	7,405,150	22%	5,759,672
Registry	2,681,965	2,570,121	2,356,954	2,794,088	(16%)	2,499,272
Medical Fees	2,570,621	2,484,908	2,452,926	1,991,696	23%	2,163,682
Other Professional Fees	1,112,762	1,371,290	1,153,808	2,033,569	(43%)	2,044,784
Supplies	5,074,477	5,522,114	5,371,258	5,253,450	2%	4,481,074
Purchased Services	2,660,121	2,761,923	2,668,373	2,422,027	10%	2,354,587
Other Expenses	1,891,663	1,901,547	1,915,172	1,678,508	14%	1,762,554
Operating Expenses	44,068,006	46,476,570	46,438,885	41,230,930	13%	39,140,365
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,658,483	\$ 1,861,018	\$ 1,664,186	\$ 1,115,016	49%	\$ 1,633,108
EBIDA Margin	4%	4%	3%	3%	31%	4%
Interest	200,050	241,366	400,752	117,423	241%	349,601
Depreciation	644,627	667,754	342,049	699,368	(51%)	793,939
Amortization	697,970	756,606	701,227	286,579	145%	1,335,445
Total Expenses	45,610,653	48,142,296	47,882,913	42,334,300	13%	41,619,349
<b>Operating Gain (Loss)</b>	\$ 115,837	\$ 195,293	\$ 220,158	\$ 11,647	1,790%	\$ (845,876)
<b>Operating Margin</b>	0.25%	0.40%	0.46%	0.03%	1,564.1%	(2.1%)

**KERN MEDICAL**  
**Year to Date Analysis: Revenue & Expenses**  
June 30, 2024

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>Gross Patient Revenue</b>	\$ 1,274,776,045	\$ 1,164,404,035	9%	\$ 1,143,874,305	11%
Contractual Deductions	(986,794,264)	(891,415,314)	11%	(875,954,719)	13%
<b>Net Revenue</b>	287,981,781	272,988,721	5%	267,919,585	
Indigent Funding	201,286,740	172,062,805	17.0%	173,298,171	16%
Correctional Medicine	34,172,564	31,819,437	7%	31,016,094	10%
County Contribution	3,422,997	3,389,367	1%	3,422,531	0.01%
Incentive Funding	186,406	5,100,000	(96%)	1,404,200	0.0%
<b>Net Patient Revenue</b>	527,050,488	485,360,330	9%	477,060,582	10%
Other Operating Revenue	24,162,838	29,146,361	(17%)	30,036,798	(20%)
Other Non-Operating Revenue	202,112	156,720	29%	1,857,694	(89%)
<b>Total Revenue</b>	551,415,437	514,663,412	7%	508,955,075	8%
<b>Expenses</b>					
Salaries	242,356,280	215,021,346	12.7%	209,587,325	16%
Employee Benefits	100,959,488	90,201,427	11.9%	85,323,696	18%
Registry	30,701,142	34,200,131	(10%)	34,623,148	(11%)
Medical Fees	27,495,136	23,900,350	15%	25,481,810	8%
Other Professional Fees	16,647,997	24,402,826	(32%)	25,185,895	(34%)
Supplies	61,102,915	64,131,504	(5%)	60,843,345	0.4%
Purchased Services	31,236,003	29,263,883	7%	30,223,472	3%
Other Expenses	21,270,041	20,142,091	6%	19,241,017	11%
Operating Expenses	531,769,001	501,263,559	6%	490,509,709	8%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 19,646,437	\$ 13,399,852	47%	\$ 18,445,366	7%
EBIDA Margin	4%	3%	37%	4%	(2%)
Interest	3,135,010	1,409,077	122%	1,962,649	60%
Depreciation	8,040,981	8,392,413	(4%)	8,418,720	(4%)
Amortization	7,184,100	3,438,947	109%	6,429,492	12%
Total Expenses	550,129,092	514,503,996	7%	507,320,569	8%
<b>Operating Gain (Loss)</b>	\$ 1,286,346	\$ 159,416	707%	\$ 1,634,506	(21%)
<b>Operating Margin</b>	0.2%	0.0%	653.1%	0.3%	(27%)



## KERN MEDICAL BALANCE SHEET

	JUNE 2024	JUNE 2023
<b>ASSETS:</b>		
<b><i>Total Cash</i></b>	<b>\$ 51,292,807</b>	<b>\$ 66,921,303</b>
Patient Receivables Subtotal	226,705,462	231,601,324
Contractual Subtotal	(178,831,571)	(174,185,680)
<b><i>Net Patient Receivable</i></b>	<b>47,873,891</b>	<b>57,415,643</b>
 Total Indigent Receivable	 213,986,673	 197,883,640
Total Other Receivable	18,710,043	16,613,810
Total Prepaid Expenses	7,169,124	5,666,451
Total Inventory	4,640,927	5,487,464
 <b><i>Total Current Assets</i></b>	 <b>343,673,465</b>	 <b>349,988,312</b>
 Deferred Outflows of Resources	 112,536,013	 105,241,458
Total Land, Equipment, Buildings and Intangibles	269,668,722	252,842,138
Total Construction in Progress	8,190,143	11,851,019
<b><i>Total Property, Plant &amp; Equipment</i></b>	<b>277,858,865</b>	<b>264,693,157</b>
 Total Accumulated Depr & Amortization	 (169,685,192)	 (155,408,105)
<b><i>Net Property, Plant, and Equipment</i></b>	<b>108,173,673</b>	<b>109,285,051</b>
 <b><i>Total Long Term Assets</i></b>	 <b>112,536,013</b>	 <b>105,241,458</b>
 <b><i>Total Assets</i></b>	 <b>\$ 564,383,150</b>	 <b>\$ 564,514,821</b>

# KERN MEDICAL BALANCE SHEET

	JUNE 2024	JUNE 2023
<b>LIABILITIES &amp; EQUITY:</b>		
Total Accounts Payable	\$ 17,165,327	\$ 12,680,744
Total Accrued Compensation	22,200,143	22,551,130
Total Due Government Agencies	3,958,120	14,963,552
Total Other Accrued Liabilities	25,609,317	27,430,669
<b><i>Total Current Liabilities</i></b>	<b>68,932,907</b>	<b>77,626,096</b>
Unfunded Pension Liability	345,399,109	284,243,193
Other Long-Term Liabilities	82,100,881	134,837,243
<b><i>Total Long-Term Liabilities</i></b>	<b>427,499,990</b>	<b>419,080,436</b>
<b><i>Total Liabilities</i></b>	<b>496,432,897</b>	<b>496,706,532</b>
Fund Balance	36,714,022	36,714,022
Retained Earnings	31,236,232	31,094,268
<b><i>Total Fund Balance</i></b>	<b>67,950,253</b>	<b>67,808,290</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>\$ 564,383,150</b>	<b>\$ 564,514,821</b>

**KERN MEDICAL**  
**STATEMENT OF CASH FLOWS**

	Fiscal Year-to-Date June 2024	Fiscal Year-End June 2023
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Cash received for patient/current services	\$ 293,523,533	\$ 264,388,064
Cash received for other operations	233,602,712	236,708,950
Cash paid for salaries and benefits	(339,411,493)	(202,912,375)
Cash paid for services and supplies	(186,981,598)	(292,069,170)
Net cash (used in) provided by operating activities	<u>733,154</u>	<u>6,115,469</u>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES</b>		
Cash (provided to) received from various County funds	-	2,070,094
Interest paid - pension obligation bond	420,331	(365,334)
Principal paid - pension obligation bond	(1,062,281)	(2,938,587)
Interest paid - line of credit	-	(262,368)
Line of credit payment	<u>-</u>	<u>-</u>
Net cash provided by (used in) noncapital financing activities	<u>(641,950)</u>	<u>(1,496,195)</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Acquisition or construction of capital assets	(18,896,864)	(12,141,601)
Payments on right-of-usage lease liability	3,896,089	(3,034,901)
Interest paid - right-of-usage lease liability	31,211	-
Payments on SBITA liability	(752,150)	(782,410)
Interest paid - SBITA	<u>2,013</u>	<u>-</u>
Net cash used by capital and related financing activities	<u>(15,719,700)</u>	<u>(15,958,912)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Interest on bank deposits and investments	<u>-</u>	<u>181,109</u>
<b>NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS</b>	<u>(15,628,497)</u>	<u>(11,158,529)</u>
CASH AND CASH EQUIVALENTS, beginning of year	<u>66,921,303</u>	<u>78,079,832</u>
CASH AND CASH EQUIVALENTS, year-to-date	<u><u>\$ 51,292,807</u></u>	<u><u>\$ 66,921,303</u></u>



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

August 21, 2024

**Subject:** Kern County Hospital Authority Chief Executive Officer Report

**Recommended Action:** Receive and File

**Summary:**

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



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

August 21, 2024

**Subject:** Monthly report on What's Happening at Kern Medical Center

**Recommended Action:** Receive and File

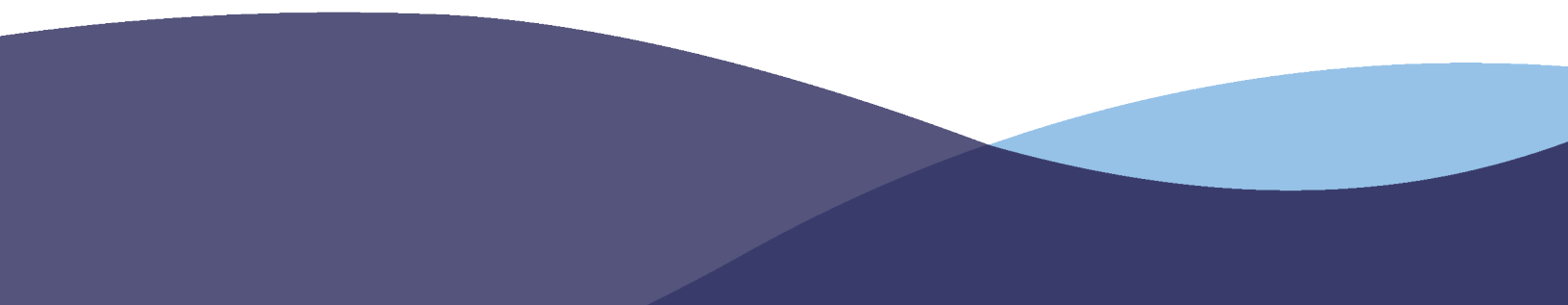
**Summary:**

Each month Kern Medical will be sharing a report with your Board on "What's Happening" in and around Kern Medical.

Therefore, it is recommended that your Board receive and file the attached report on What's Happening at Kern Medical.



*What's Happening?*



# Kern Medical Commercial





# Blood Drive Recap - June 25, 2024

**HOUCHIN**  
COMMUNITY BLOOD BANK

*blood drive*



**JUNE  
RESULTS**



 KernMedical

**10** FIRST -TIME  
DONORS

**31** UNITS  
COLLECTED

**93** LIVES  
SAVED!

Next blood drive: September 11, 2024



# AHA Recognitions



The American Heart Association and  
American Stroke Association proudly recognizes

**Kern County Hospital Authority  
Bakersfield, CA**

**Get With The Guidelines® - Stroke GOLD PLUS with Target: Stroke  
Honor Roll and Target: Type 2 Diabetes Honor Roll**

**Achievement Award Hospital**

The American Heart Association recognizes this hospital for its continued success  
in using the **Get With The Guidelines®** program.

Thank you for applying the most up-to-date evidence-based treatment guidelines  
to improve patient care and outcomes in the community you serve.\*

**Nancy Brown**  
Chief Executive Officer  
American Heart Association

**Joseph C. Wu, MD, PhD, FAHA**  
President  
American Heart Association

\*For more information, please visit [Heart.org/GWTGQualityAwards](https://www.heart.org/GWTGQualityAwards).



## **Get With The Guidelines® - Stroke Gold Plus**

Target: Stroke Honor Roll

Target: Type 2 Diabetes Honor Roll

## **Get With The Guidelines®**

**Resuscitation Bronze - Newly Born**

## **Get With The Guidelines®**

**Resuscitation Bronze - Pediatrics**

# August- Valley Fever Awareness Month

## AUGUST IS VALLEY FEVER *Awareness Month*



**August 1st-7th:** Receive a **FREE** Chicken Shawarma or Chicken Kabob bowl at any Flame & Skewers location with proof of a \$10 (minimum) donation to the Valley Fever Institute

**August 8th:** 10% of all sales at Flame & Skewers will be donated to the Valley Fever Institute



**August 6th & 13th:** Visit us in the **Cafe** from Noon-1pm for a chance to spin our prize wheel

**August 7th & 14th:** Visit us at **Columbus** from Noon-1pm for a chance to spin our prize wheel

Support **Valley Fever** and everyone it effects, one yard sign at a time!

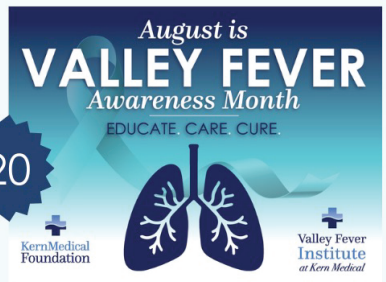
Visit [KernMedicalFoundation.com](http://KernMedicalFoundation.com) to purchase yours today!

 Valley Fever Institute  
at Kern Medical

**ORDER YOUR  
YARD SIGN TODAY!**



**\$20**



## AUGUST IS VALLEY FEVER *Awareness Month*

Support **Valley Fever**  
and everyone it affects,  
one yard sign at a time!

Purchase your sign at  
[KernMedicalFoundation.com](http://KernMedicalFoundation.com)

Pick up location:  
7100 Truxtun Ave. Suite 330  
Bakersfield, CA 93301

 Valley Fever Institute  
at Kern Medical

**\$20**



**PRE ORDER YOUR  
YARD SIGN TODAY!**



**HEALTHFUL  
HARVEST**

**Save the date for a fun-filled community health event  
with food, music, and giveaways!**

**SATURDAY, OCTOBER 26, 2024**

**12:00 PM TO 3:00 PM**

**Haven Drive Middle School  
341 Haven Drive, Arvin 93203**

For more event information, call 661.632.5562

**EVENT PRESENTED BY:**

Adventist Health  Dignity Health  KAISER PERMANENTE  KernMedical 

# Kern Medical in the News

KGET GUEST INTERVIEWS

## Bakersfield hand surgeon shares tips on how to prevent injuries from fireworks

by: Luis Garcia

Posted: Jul 1, 2024 / 02:49 PM PDT

Updated: Jul 1, 2024 / 02:50 PM PDT



Dr. David Bowen, Certified Hand and Plastics surgeon, discussing Fourth of July injury prevention.



Dr. Carlos D'Assumpcao, Infectious Disease Physician, discussing Valley Fever Awareness and this month's awareness campaigns.



# National Recognitions - July

- Healthy Vision Month
- Cleft & Craniofacial Awareness & Prevention Month
- National Hemochromatosis Awareness Month
- Sarcoma Awareness Month
- UV Safety Month
- World Brain Day (July 22)
- World Hepatitis Day (July 28)

# National Recognitions - August

- National Immunization Awareness Month
- National Breastfeeding Month
- Valley Fever Awareness Month
- World Lung Cancer Day (August 1)
- Overdose Awareness Day (August 31)



Kern Medical Surgery Center, LLC  
9300 Stockdale Hwy, Suite 200  
Bakersfield, CA. 93311  
661-964-2470

**BOARD OF MANAGERS  
REGULAR MEETING  
KERN MEDICAL SURGERY CENTER, LLC**

August 21, 2024

**Subject:** Administrative Report for Two-Months Ended June 30, 2024

**Recommended Action:** Receive and File

**Summary:**

**Kern Medical Surgery Center Operations**

**Key Performance Indicators:**

- The Surgery Center budgets to financially breakeven on operations each month. May resulted in an operating loss of \$76,119.
- May volumes of 208 surgeries are 17 below the May budget of 225 due to case cancellations.
- June resulted in an operating loss of \$118,779
- Total surgeries of 171 for June are 29 below the April budget of 200 due to surgeon vacation time.

**The following items have budget variances for the months of May and June 2024:**

**Patient Revenue:**

For May, gross patient revenue was 3% unfavorable to budget for the month, with the budget at \$1,587,366 and the actual gross patient revenue at \$1,540,163. May net revenue of \$341,532 is \$132,840 less than the May budgeted net revenue of \$474,372.

For June gross patient revenue had a 2% favorable budget variance with actual gross of \$1,440,833 compared to the budget of \$1,410,992. June net revenue of \$305,853 is \$115,811 less than the budget of \$421,664.

On a fiscal year-to-date basis, gross patient revenue of \$16,763,425 is 9% below the budget of \$18,349,949.

**Supplies Expense:** Supplies were under budget for May. June supplies were also under budget.

**Salary and Benefit Expense:**

Salary expenses for May were \$139,124. This was \$19,334 under the budgeted amount of \$158,458. June salary expenses were \$150,265 which were \$9,333 over the June budget of \$140,932 due to SEIU negotiated pay increases and retro pay. Benefit expenses for May were \$21,136 which was \$14,331 below the budget of \$35,467. Benefit expenses for June were \$21,136 which was \$10,390 below the budget of \$31,526.

**Purchased Services:**

May purchased services in the amount of \$84,202 was over budget by \$16,795 due to anesthesia costs. June purchased services of \$87,374 was over budget by \$22,073 due to anesthesia costs.

**Initiatives for Marketing and Growth:**

In July we welcomed a community orthopedic surgeon and in August we will begin a new specialty, ophthalmology. We are also in the process of credentialing a new group of general surgeons.

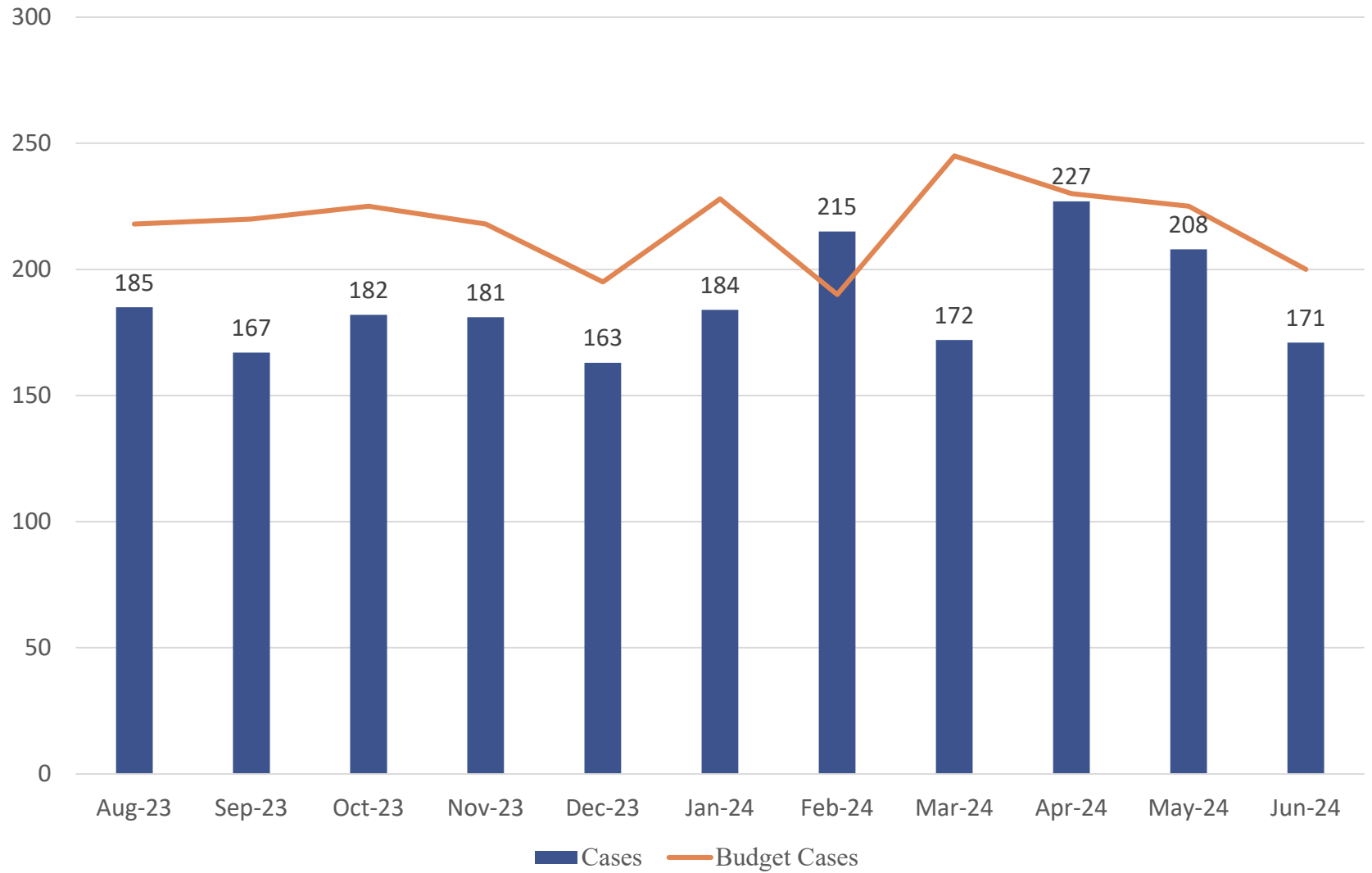
The Surgery Center staff engaged in quarterly in-service and education to provide the safest and highest quality of care to our patients.



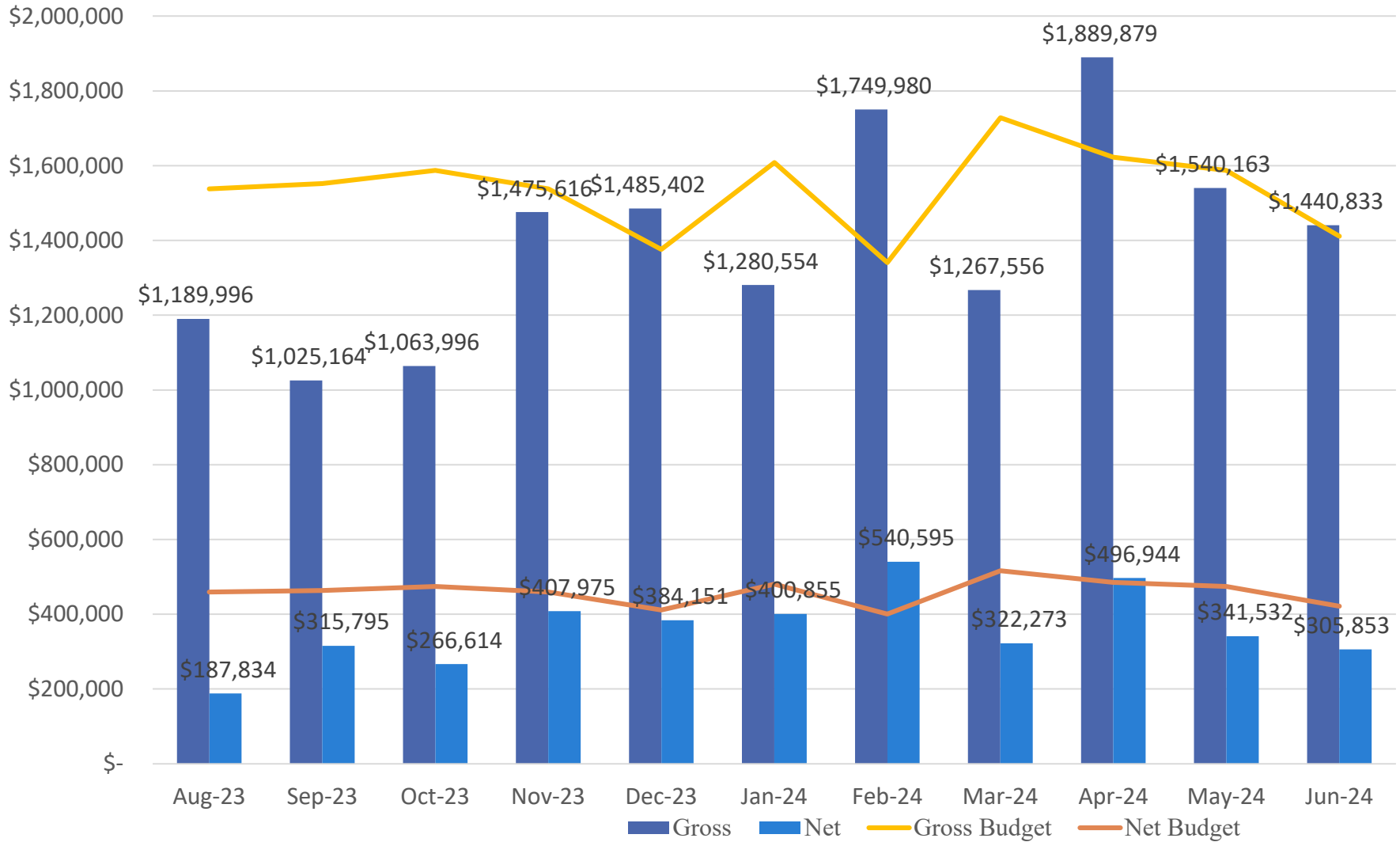


**BOARD OF MANAGERS' REPORT  
JULY 2023 – JUNE 2024**

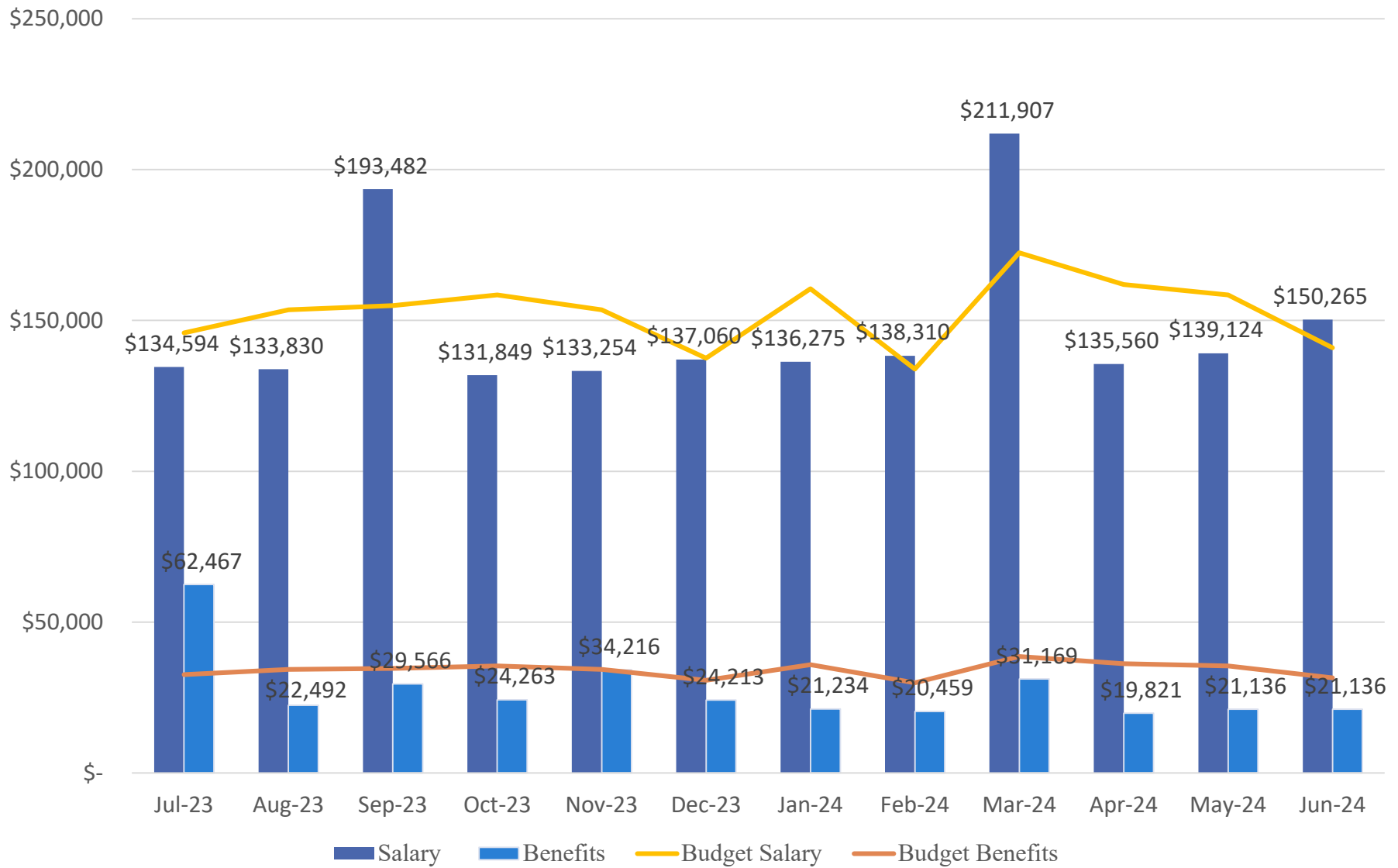
## Case Volume



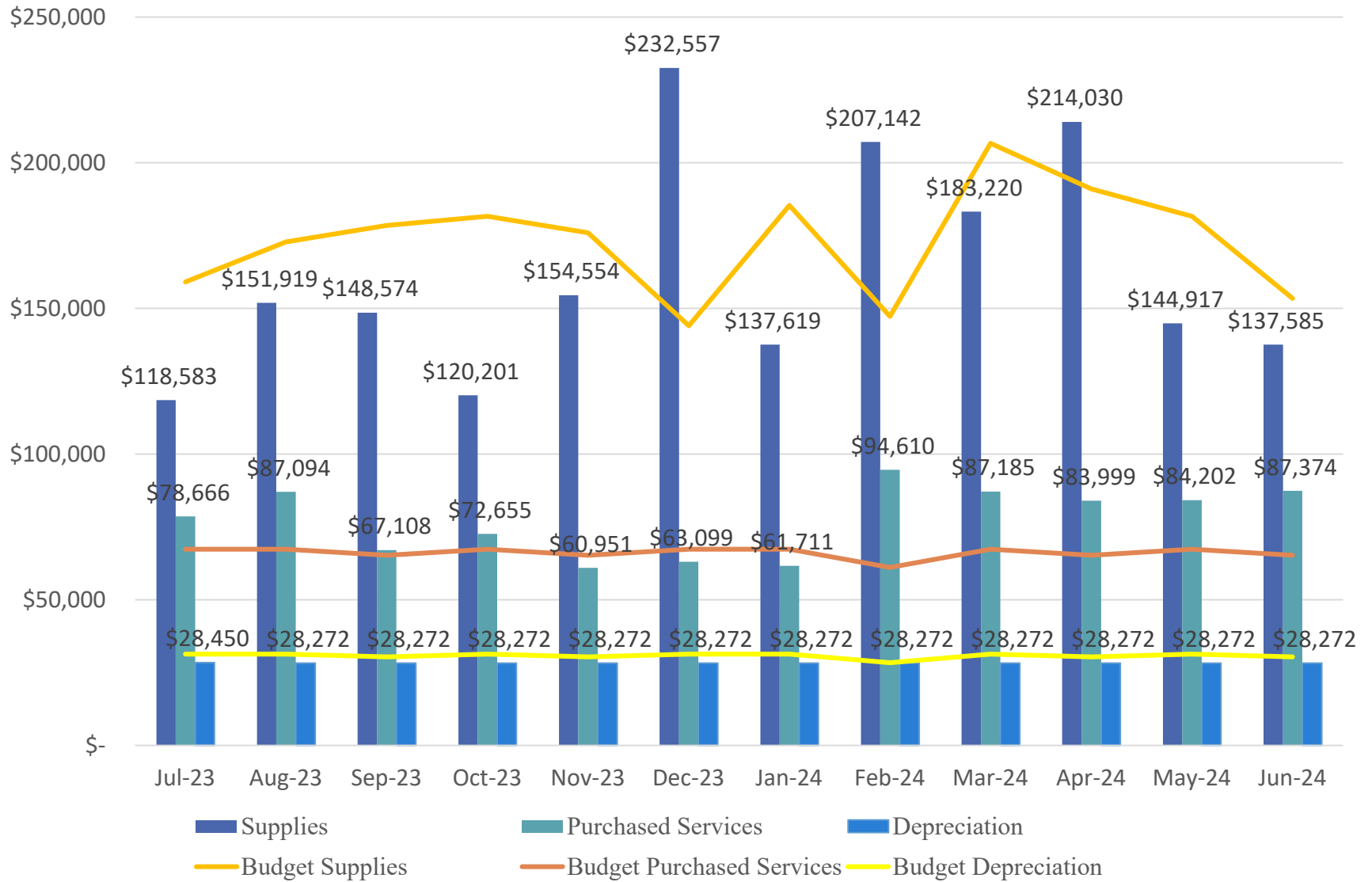
## Total Revenue



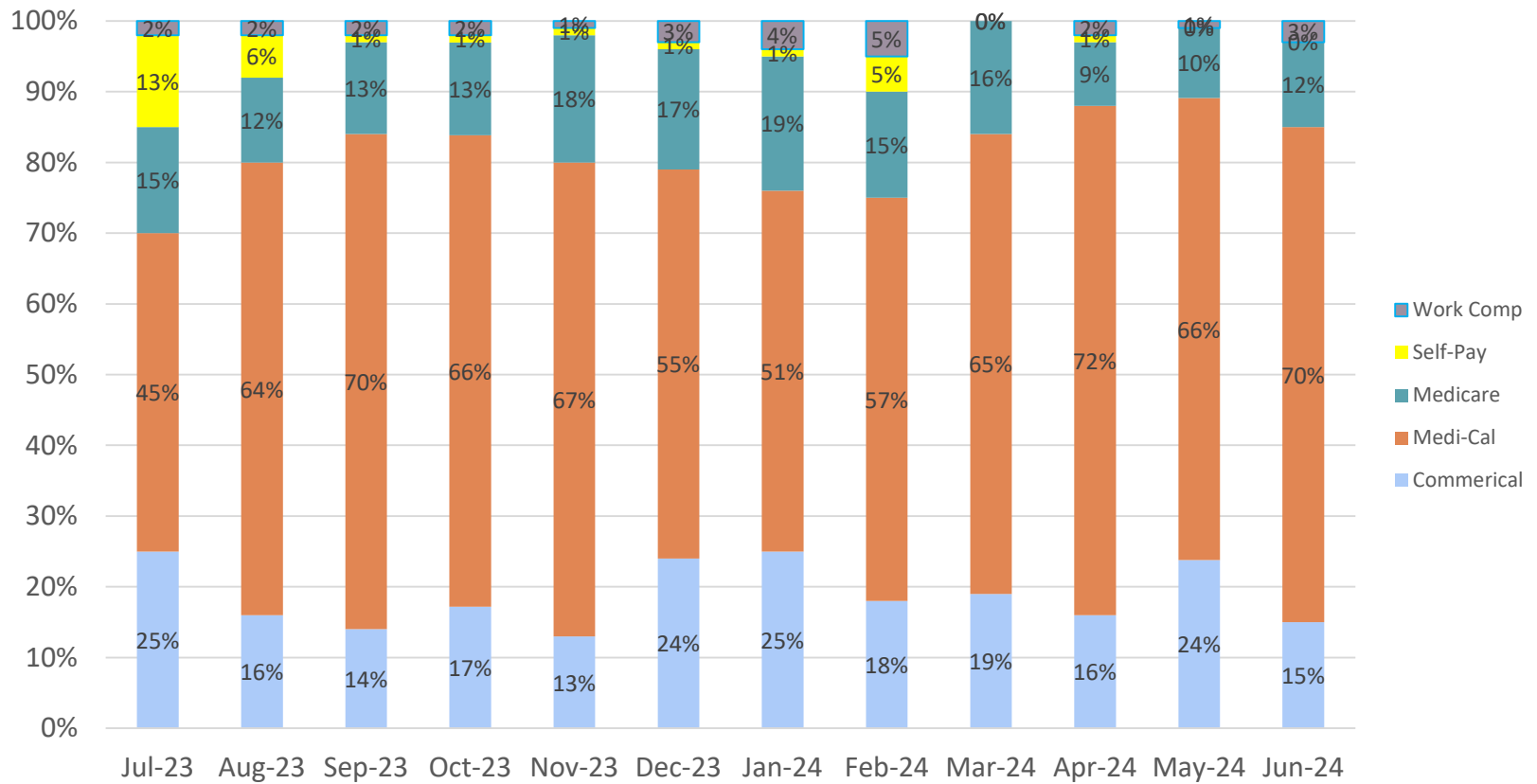
## Expenses



# Expenses



## PAYER MIX



**Kern Medical Surgery Center, LLC.  
Profit and Loss**

	<b>May-24</b>	<b>Jun-24</b>	<b>Budget Jun-24</b>	<b>Variance</b>
<b>Gross Revenue</b>	<b>\$ 1,540,163</b>	<b>\$ 1,440,833</b>	<b>\$ 1,410,992</b>	<b>\$ (29,841)</b>
<b>Net Revenue</b>	<b>341,532</b>	<b>305,853</b>	<b>421,664</b>	<b>115,811</b>
<b>Salaries</b>	139,124	150,265	140,932	<b>(9,333)</b>
<b>Benefits</b>	21,136	21,136	31,526	<b>10,390</b>
<b>Supplies</b>	144,917	137,585	153,494	<b>15,909</b>
<b>Purchased Services</b>	84,202	87,374	65,301	<b>(22,073)</b>
<b>Depreciation</b>	28,272	28,272	30,411	<b>2,139</b>
<b>Total Expenses</b>	<b>417,651</b>	<b>424,632</b>	<b>421,664</b>	<b>(2,968)</b>
<b>Net Operating Gain (Loss)</b>	<b>\$ (76,119)</b>	<b>\$ (118,779)</b>	<b>\$ -</b>	<b>\$ (118,779)</b>

**Kern Medical Surgery Center, LLC.**  
**Profit and Loss**  
**Fiscal Year to Date**

	<b>Actual FYTD</b>	<b>Budget FTYD</b>
<b>Gross Revenue</b>	\$ 16,763,425	\$ 18,349,949
<b>Net Revenue</b>	4,343,538	5,483,736
<b>Salaries</b>	1,775,510	1,831,997
<b>Benefits</b>	332,172	410,000
<b>Supplies</b>	1,950,901	2,077,600
<b>Purchased Services</b>	928,497	794,139
<b>Depreciation</b>	339,442	369,996
<b>Total Expenses</b>	\$ 5,326,522	\$ 5,483,732
<b>Net Operating Gain (Loss)</b>	\$ (982,984)	\$ -



**Balance Sheet**  
**As of April 30,2024**

	<b>May-24</b>	<b>Jun-24</b>
<b>ASSETS</b>		
<b>Total Cash on Hand</b>	<b>\$ 171,203</b>	<b>\$ 129,745</b>
<b>Gross Patient Receivables</b>	<b>1,594,818</b>	<b>1,419,963</b>
<b>Contractual Reserve</b>	<b>(1,132,321)</b>	<b>(1,041,396)</b>
<b>Net Patient Receivables</b>	<b>462,497</b>	<b>378,567</b>
<b>Other Receivables</b>	<b>-</b>	<b>-</b>
<b>Total Accounts Receivable</b>	<b>533,801</b>	<b>457,615</b>
<b>Total Other Current Assets</b>	<b>976</b>	<b>638</b>
<b>Total Current Assets</b>	<b>705,980</b>	<b>587,997</b>
<b>Total Fixed Assets</b>	<b>725,196</b>	<b>696,924</b>
<b>TOTAL ASSETS</b>	<b>1,431,176</b>	<b>1,284,922</b>
<b>Liabilities and Equity</b>		
<b>Total Accounts Payable</b>	<b>2,545,042</b>	<b>2,517,567</b>
<b>TOTAL LIABILITIES</b>	<b>2,545,042</b>	<b>2,517,567</b>
<b>Total Equity</b>	<b>(1,113,866)</b>	<b>(1,232,646)</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$ 1,431,176</b>	<b>\$ 1,284,922</b>



Kern Medical Surgery Center, LLC  
9300 Stockdale Hwy, Suite 200  
Bakersfield, CA. 93311  
661-964-2470

## **BOARD OF MANAGERS KERN MEDICAL SURGERY CENTER, LLC REGULAR MEETING**

August 21, 2024

**Subject:** Proposed Master Services Agreement with Press Ganey Associates LLC (d/b/a Press Ganey Associates, Inc.) for regulatory reporting services

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

### **Summary:**

Kern Medical Surgery Center, LLC requests that your Board approve the Master Services Agreement with Press Ganey Associates LLC (d/b/a Press Ganey Associates, Inc.) for the purpose of reporting patient survey data to the Centers for Medicare and Medicaid Services (CMS) as required for Ambulatory Surgery Center Quality Reporting Program.

Reporting will be done on multiple patient care related measures occurring at the facility. Press Ganey develops patient satisfaction surveys used to measure patient perceptions of care and these surveys are reported to CMS. Noncompliance in reporting will result in a 2% reduction of Medicare payments to the facility.

The cost will be \$3,800 annually with an increase of 4% for years two and three.

Counsel is unable to approve due to non-standard terms which include travel reimbursement not in accordance with policy, late fees, issues with confidentiality, liquidated damages for termination, limitation of indemnification, limitation of liability to the cost of the agreement, mandatory arbitration, and law/venue in Indiana. Efforts were made to negotiate with the vendor, but to no avail.

Therefore, it is recommended that your Board approve the proposed Master Services Agreement with Press Ganey Associates LLC (d/b/a Press Ganey Associates Inc.) for a term of three years, effective October 1, 2024 through September 30, 2027, with a maximum payable of \$11,711, and have the Chairman sign.

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“MSA”) is entered into as of **October 1, 2024** (“Effective Date”) by and between **Press Ganey Associates LLC (d/b/a Press Ganey Associates, Inc.)**, an Indiana Limited Liability Company with its principal offices at 1173 Ignition Drive, South Bend, Indiana 46601 (“Press Ganey”) and **Kern Medical Surgery Center**, with its principal offices at 9300 Stockdale Hwy Ste 200, Bakersfield, CA 93311 (“Client”). Each of Press Ganey and Client may be referred to herein as a “Party” and collectively as the “Parties.” This MSA together with each Statement of Work (“SOW(s)”) entered into by the Parties are collectively referred to as the “Agreement.”

**WHEREAS**, Client is in the business of operating health care facilities and delivering healthcare services;

**WHEREAS**, Press Ganey is in the business of providing certain performance measurement, improvement and other services to health care facilities; and

**WHEREAS**, Client desires to engage Press Ganey, and Press Ganey desires to be engaged, to perform the Services on behalf of Client detailed in and in accordance with this Agreement.

**NOW THEREFORE**, in consideration of the recitals above and the covenants, agreements and stipulations set forth herein, the Parties agree as follows:

1. **SERVICES.** Subject to the terms and conditions of this Agreement, Client agrees to purchase from Press Ganey the products, and engage Press Ganey to perform the services on Client’s behalf, that are described in a SOW (“Service(s)”), and Press Ganey agrees to use commercially reasonable efforts to provide, deliver or perform those Services to Client in accordance with this Agreement.
2. **STATEMENTS OF WORK.** Each Service shall be described in a written SOW executed by the Parties that references this Agreement. The Parties shall enter into on or after the Effective Date a separate SOW for each Service performed and delivered under this Agreement. Unless specifically provided otherwise in a SOW, each SOW, including any additional obligations of each Party set forth in the SOW, shall be deemed to be incorporated fully (subject to the final sentence of this Section 2 (Statements of Work)) into this Agreement and shall be performed subject to the terms of this Agreement and any additional provisions set forth in that SOW. In the event of any conflict between a SOW and the terms of this Agreement, the terms of this Agreement shall control, unless the SOW references a particular section of this Agreement and provides that it is expressly amended for the purposes of the applicable SOW or otherwise, and that amendment will be valid only for that particular SOW and will not amend this Agreement generally (unless otherwise expressly set forth in that SOW). The first SOW between the Parties is attached to and incorporated into this Agreement as **Exhibit A**. Notwithstanding the foregoing, should Client and Press Ganey enter into a SOW for Patient Reported Outcome Measures (“PROMs SOW”), those terms and conditions in the PROMS SOW relating to de-identified Client Data, Limited Data Set(s) (as defined in the PROMs SOW), publication of data, intellectual property rights, Data Extracts (as defined in the PROMs SOW), and indemnification, including but not limited to hold harmless language, shall apply to the services performed under such PROMs SOW.
3. **TERM.** The initial term of this Agreement shall commence on the Effective Date and continue for **thirty-six (36) months** therefrom (the “Initial Term”). This Agreement shall renew automatically for successive one (1) year periods (each a “Subsequent Term,” and together with Initial Term, the “Term”) on the expiration date of the Initial Term or Subsequent Term, as the case may be, at prevailing prices unless either Party provides the other Party ninety (90) days advance written notice of nonrenewal. Notwithstanding the forgoing, this Agreement shall automatically extend and continue to govern for so long as a SOW remains in effect or an aspect of delivery of the Services described in a SOW remains outstanding, including but not limited to as described in Section 13(d).

#### 4. COMPENSATION.

- a. Client shall pay Press Ganey the amounts set forth in each SOW, in United States Dollars, in accordance with the terms of that SOW and this Agreement. Unless otherwise provided in the applicable SOW, Press Ganey will invoice Client on a monthly basis for all fees, charges and other amounts incurred by Client under this Agreement.
- b. Reasonable and customary travel expenses for on-site visits (including, without limitation, advisor visits) will be invoiced as incurred. Client must provide Press Ganey fifteen (15) days written notice of intent to reschedule or cancel scheduled on-site visits. If travel is scheduled at the request of Client, and Client reschedules or cancels less than fifteen (15) days prior to travel, travel expenses incurred by Press Ganey will be billed to Client at cost.
- c. Client shall be responsible for any applicable United States Postal Service rate increases that may occur and take effect during the Term of this Agreement.
- d. Payment is due to Press Ganey within thirty (30) days after the invoice date. Client shall submit each payment to: Press Ganey Associates LLC (d/b/a Press Ganey Associates, Inc.), Box 88335, Milwaukee, WI 53288-0335.
- e. Press Ganey, in its sole discretion, reserves the right to withhold, suspend or terminate Services or immediately cancel this Agreement for past due or otherwise delinquent accounts. In addition, if any invoice is not paid by Client within that thirty (30) day period, Press Ganey may charge Client a late payment service fee of one and one-half percent (1.5%) on all outstanding amounts per month or the maximum amount permitted under applicable law, whichever is less.

**5. CLIENT REQUIREMENTS.** Press Ganey shall ensure the quality of the Press Ganey national database for its survey service products through established standards of data collection and data reporting. In order to participate in the national database, Client agrees to comply with the requirements of sampling strategy, survey distribution methodology or other standards required for delivery of Services, which are set forth in each applicable SOW. Client acknowledges that a common distribution methodology must be used in order to avoid bias, enable comparative data validity, and meet the highest standards of reporting. Additionally, Client acknowledges that reporting standards require a minimum number of surveys be returned before a statistically valid report can be issued by Press Ganey.

**6. CONSENTS/AUTHORIZATIONS.**

- a. Client hereby represents and warrants that it has obtained and shall continue to obtain and maintain throughout the Term, all necessary and required licenses, permits, consents, authorizations, and/or approvals required by applicable laws, rules, regulations or policies to enable Press Ganey's delivery of Services on Client's behalf in accordance with those laws, rules, regulations or policies, including, but not limited to, any patient consents or authorizations necessary for Press Ganey to perform the Services. For the avoidance of doubt, Client represents and warrants that it has obtained, and shall continue to obtain and maintain throughout the Term, the consents required by the Telephone Consumer Protection Act (TCPA) and the Federal Communications Commission's TCPA rules for Press Ganey to perform the Services through the use of an automatic telephone dialing system, prerecorded or artificial voice, or other technologies.
- b. Should Client request and Press Ganey agree, to mail or deliver surveys in connection with the Services to patients who have received mental health services or treatment for other sensitive conditions, Client warrants and covenants to Press Ganey that each survey that Client requests or otherwise engages Press Ganey to mail or deliver in connection with the Services, including those involving patients who have received mental health services or treatment for other sensitive conditions, when mailed or delivered by Press Ganey in accordance with applicable SOW, will comply with all applicable laws, including: (i) HIPAA

(as defined in Section 9(c)), (ii) other applicable federal and state laws governing the privacy or security of health data, (iii) all laws governing the use or disclosure of sensitive health information, (iv) the TCPA and the Federal Communications Commission's TCPA rules, and (v) all laws governing the use or disclosure of health data relating to a minor. Client acknowledges and agrees that Press Ganey provides the Services as an administrative service only and in reliance on Client's representations and warranties set forth in this Section 6 (Consents / Authorizations) and elsewhere in this Agreement.

## **7. OWNERSHIP AND INTELLECTUAL PROPERTY.**

- a. Unless specifically provided otherwise in a SOW (in which case that specific exception shall apply only to the SOW that includes that exception and not any other SOWs), the Parties acknowledge and agree that any Client-specific reports (including quarterly reports and any report created by Client using a Press Ganey online application) and Client-specific data analyses created by Press Ganey for Client under this Agreement (collectively, "Work Product") shall be owned by Client. Subject to Section 7(b), below, all right, title and interest in the Work Product will vest in Client and all Work Product will be deemed to be works made for hire for Client.
- b. Notwithstanding anything to the contrary in Section 7(a), Press Ganey owns, and reserves all rights in and to, the Press Ganey Knowledge Base Materials. The phrase "Press Ganey Knowledge Base Materials" shall mean any survey questions, methodologies, comparative and benchmark databases and any related documentation generated by or on behalf of Press Ganey or any Press Ganey personnel (including, without limitation, all de-identified survey-level responses and other measures of patient satisfaction or clinical performance) as well as any technology, software, code, processes, know-how, or tools that have independent value outside of the Work Product. In the event that the Work Product contains or references any Press Ganey Knowledge Base Materials, Press Ganey hereby grants to Client a perpetual, non-exclusive, non-transferable, non-sublicensable, limited license to use or access those Press Ganey Knowledge Base Materials that may be contained in the Work Product solely for Client's own internal purposes. Press Ganey will retain all right, title and interest (including, without limitation, all intellectual property rights) in and to the Press Ganey Knowledge Base Materials. Client shall not, and shall not permit any third party to, (i) decompile, disassemble or reverse engineer the Press Ganey Knowledge Base Materials; (ii) modify the Press Ganey Knowledge Base Materials, or create any derivative product from any of the Press Ganey Knowledge Base Materials; (iii) use the Press Ganey Knowledge Base Materials except as incorporated into the Work Product; or (iv) market, sell or distribute the Press Ganey Knowledge Base Materials on a stand-alone basis or together with any other products or services. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Press Ganey Knowledge Base Materials shall be owned solely and exclusively by Press Ganey, as shall any and all patent rights, copyrights, trade secret rights, trademark rights, and all other proprietary rights, worldwide therein and thereto, and Client hereby assigns to Press Ganey any and all of its interests, title or ownership in the Press Ganey Knowledge Base Materials or any modification to or derivative work of the Press Ganey Knowledge Base Materials.
- c. Client acknowledges and agrees that, pursuant to this Agreement, Client has provided and continues to provide Press Ganey, or Press Ganey has otherwise collected or accessed and continues to collect or access on Client's behalf, certain data (including, but not limited to, patient uploads and responses) (collectively, "Client Data") in connection with Press Ganey's performance of the Services for Client or the exercise of Press Ganey's rights under this Agreement. Notwithstanding anything to the contrary in this Agreement, the BAA (as defined below) or any other agreement or understanding between the Parties, and without limiting any other rights of Press Ganey with respect to Client Data or PHI (as defined below) received from or created on behalf of Client, including any rights set forth in the BAA, Client hereby authorizes Press Ganey to de-identify Client Data and to use, disclose and include that de-identified Client

Data within the Press Ganey Knowledge Base Materials. The Parties acknowledge and agree that de-identified Client Data shall immediately cease to be Client Data and shall become part of the Press Ganey Knowledge Base Materials. The Parties further acknowledge and agree that de-identified Client Data no longer meets the definition of PHI and is therefore not subject to the provisions of the BAA. Client shall not, and Client shall not permit any third party to, attempt to re-identify any Press Ganey Knowledge Base Materials, including any de-identified Client Data therein.

- d. Client acknowledges and agrees that electronic, raw data files containing patient-level responses, measurement or improvement scores or compilations thereof, that may be provided by Press Ganey to Client ("Data Files"), also contain Press Ganey proprietary information and intellectual property. Client may request, and Press Ganey may agree to provide Client with access to the Data Files in a manner determined by Press Ganey after the Parties enter into a separate data use agreement in the form and substance approved by Press Ganey. In the event that Press Ganey provides Client with access to any Data Files, Client agrees to: (i) only use the Data Files for its own internal purposes and not for the benefit of any third party; (ii) only share, disclose, or transmit the Data Files to a person who is an employee of Client or has a written contractual relationship with Client to provide further analysis of Client's own internal business purposes; (iii) not, and Client shall not permit any third party to, combine any of the information in the Data Files with other information to generate benchmarks; and (iv) not, and Client shall not permit any third party to, share Data Files with any other entity that provides satisfaction/experience/engagement measurement reporting tools, services, or other activities or services similar or reasonably competitive to those offered by Press Ganey.
- e. Press Ganey may use the Marks of the Client for marketing as it pertains to web, print, video, digital, or other such content, including sales presentations, ebooks, and solution sheets, provided it is used solely to promote the Services provided by Press Ganey to Client under this Agreement. Client may use the Marks of Press Ganey solely to promote its use of the Services provided by Press Ganey to Client under this Agreement, provided that such use of Press Ganey's Marks shall be in compliance with Press Ganey's then current branding usage guidelines available to Client upon request. The foregoing notwithstanding, Client grants Press Ganey the right to include Client's name in Press Ganey's client list, provided to its employees and clients, including its list of participants in the database, and list of award winners, when applicable. A Party shall immediately cease using the Marks of the other Party in any manner found objectionable by that Party. As used in this Agreement, "Marks" means a Party's trademarks, service marks and associated logos. Each Party shall retain all right, title and interest in and to its Marks, and each Party's use of the other Party's Marks shall inure to the benefit of such other Party.

## 8. CONFIDENTIALITY.

- a. Client agrees to hold in strict confidence and neither to sell, convey, distribute, duplicate, or disclose, nor otherwise utilize, alter/modify, or create derivative works from Press Ganey's Confidential Information. "Confidential Information" shall mean all information of Press Ganey's that is not generally known to the public and is used, obtained or developed by Press Ganey in connection with its business and which is disclosed in writing, verbally, electronically or by any other means directly or indirectly by Press Ganey to Client before or after the Effective Date, including, without limitation, any information relating to: methodologies and protocols, processes, surveys or other measurement instruments, measurement calculations, know-how, sampling information, staffing models, pricing and related contract information, finances, source code, product designs, improvements, trade secrets, market opportunities, customers, suppliers, specifications, future product offerings and the terms and conditions of this Agreement. Client agrees to take reasonable steps to ensure that its employees, agents and any other persons permitted access to Confidential Information are advised of the confidential nature of the materials and the restrictions herein imposed upon Client.



- b. The obligations of confidentiality provided hereunder shall survive for a period of two (2) years after the expiration or termination of this Agreement for any reason; provided, however, with respect to any item of Confidential Information which rises to the level of a trade secret under applicable law, such obligations shall survive the expiration of such two (2) year period and remain in full force and effect for so long as the applicable Confidential Information remains a trade secret under applicable law. Upon the termination or expiration of this Agreement, for any reason, all Confidential Information disclosed hereunder will be promptly returned to Press Ganey or, upon the request of Press Ganey, will be promptly destroyed and certified as destroyed by an officer of Client.
- c. Client warrants that it will only use Confidential Information as authorized by Press Ganey and in direct connection with the Services. Client acknowledges and agrees that irreparable harm would result to Press Ganey upon any breach of the covenants contained in this Section 8 (Confidentiality) by Client and that damages arising out of such breach may be difficult to ascertain. Therefore, Client agrees that, in addition to all other remedies provided at law or in equity, Press Ganey may seek, without bond, from a court of law or equity both temporary and permanent injunctive relief to prevent a breach of any of such covenants.
- d. Press Ganey shall protect the confidentiality of all information received from Client. Press Ganey shall maintain information received in connection with this Agreement in strict confidence and shall not disclose any such information to any individual or outside entity, except as authorized or required by law for the performance of its duties hereunder.
- e. "Confidential Information" shall not include any Protected Health Information (as that term is defined in 45 C.F.R. § 160.103) received from, or received, maintained, transmitted or created on behalf of, Client by Press Ganey in connection with the Services (collectively, "PHI"). All PHI shall be subject to the business associate agreement ("BAA") as required by law, between the Parties attached to and incorporated into this Agreement as **Exhibit B**, which may be amended and/or restated from time to time by the Parties. In the event of a conflict between this Agreement or any SOW, on the one hand, and the BAA, on the other hand, relating to creation, receipt, maintenance or transmission of PHI, the terms and conditions of the BAA shall control. Notwithstanding the foregoing, certain Services involve PHI transmitted directly from The Centers for Medicare and Medicaid Services ("CMS") to Press Ganey. Data transmitted directly from CMS to Press Ganey shall be governed by an applicable Data Use Agreement ("DUA") between Press Ganey and CMS, as required by CMS. PHI transmitted by Client to Press Ganey related specifically to those Services described in the preceding sentence shall be subject to the BAA, however, in the event that any provision of the BAA conflicts with Business Associate's obligations under its DUA with CMS or any other requirements imposed by CMS upon Business Associate as a CAHPS vendor, the terms and obligations of the DUA and CMS requirements as a CAHPS vendor shall supersede any requirement set forth therein.

## 9. COMPLIANCE OBLIGATIONS.

- a. **Access to Books and Records.** If 42 U.S.C. § 1395x(v)(1)(I) is applicable to this Agreement, Press Ganey will allow the Secretary of Health and Human Services ("HHS"), the Comptroller General, or their duly authorized representative, access, upon proper request, to this Agreement and to Press Ganey's books, documents, and records, and any subcontractor's books, documents, and records (collectively "Records") necessary to verify the cost of the Services provided hereunder until expiration of four (4) years after said Services are furnished. In the event that there is a request by one (1) or more federal agencies to examine Press Ganey's Records, Press Ganey shall notify Client immediately of the nature and scope of any request, and shall provide copies of any Records to Client prior to providing them to any governmental agent, giving Client an opportunity to lawfully oppose such production of documents.
- b. **Federal Healthcare Programs.** Press Ganey represents and warrants to Client that it is not excluded from participation in any federal health care program, as defined under 42 U.S.C. § 1320a-7b(f), for the provision

of items or services for which payment may be made under such federal health care programs and has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent such that it knows or should know are excluded from participation in any federal health care program to provide items or services hereunder. Press Ganey represents and warrants to Client that no final adverse action, as such term is defined under 42 U.S.C. § 1320a-7e(g), has occurred or is pending or threatened against Press Ganey or to its knowledge against any employee, contractor or agent engaged to provide items or services under this Agreement.

- c. **HIPAA.** Press Ganey shall provide its Services in accordance with all applicable federal and state laws and regulations governing the confidentiality and security of Client Data. The Parties anticipate that Press Ganey will or is likely to have access to, create, maintain, transmit and/or receive certain PHI and/or personal information in conjunction with the Services being provided hereunder. With respect to any PHI that Press Ganey receives from, or creates on behalf of, Client, Press Ganey is and will at all times during the Term be in compliance with all applicable federal and state privacy and security statutes and regulations including the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) including amendments made through the American Recovery and Reinvestment Act and any regulations thereto promulgated by the Secretary of HHS. Notwithstanding the foregoing, Client agrees that any information contained in any file(s) transferred to Press Ganey under or in furtherance of this Agreement shall not be a designated record set as defined by HIPAA. Client agrees to maintain a separate designated record set for each of its patients pursuant to which Client may comply with 45 C.F.R. §§ 164.524 and 164.526 without need to obtain or reference PHI in possession of Press Ganey.
- d. **Privacy Laws and TCPA.** With respect to Services that Press Ganey provides on behalf of Client, Client shall comply with all applicable U.S. federal and state laws, rules and regulations, international export and privacy laws, privacy policies and other laws regarding telephone calls, text messages, call recording, and the transfer and/or transmission of data, including but not limited to the TCPA.

**10. QUALITY REPORTING.** If Press Ganey is chosen as Client’s vendor under the (i) Consumer Assessment of Healthcare Providers and Systems (“CAHPS”), (ii) ORYX or other quality measurement program under The Joint Commission, (iii) Centers for Medicare and Medicaid Service reporting program, or (iv) any other federal, state or regulatory reporting program (collectively, “Quality Reporting Program”), Press Ganey shall adhere to these programs’ most current requirements in its delivery of Services. Client agrees that contracting with Press Ganey for Services under a Quality Reporting Program is not an assurance of compliance with all federal and/or state requirements. Client understands that it has a separate and distinct non-delegable legal obligation to comply with all federal and/or state requirements and Press Ganey is not liable for Client’s failure to comply with these requirements.

## **11. WARRANTY.**

- a. Press Ganey warrants that Services provided hereunder will be performed in a professional and workmanlike manner, and that the Work Product, delivered by Press Ganey to Client will conform substantially to the specifications in the SOW.
- b. Press Ganey does not warrant or represent that the Services provided pursuant to this Agreement will be capable of achieving any particular result in Client’s business, that all errors, defects or deficiencies can or will be found or corrected, or that the operation of any Work Product which is the subject of the task specifications will operate uninterrupted or error free. With regard to Services that do not comply with the warranties provided in this Section 11, Press Ganey shall correct or adjust any defective performance or nonperformance (“Defects”), of the Services provided that Client notifies Press Ganey in accordance with Section 13(b) of such non-compliance. If the Defects are not cured within the period set forth in Section 13(b), Client may terminate this Agreement pursuant to that Section.



- c. FOR THE AVOIDANCE OF DOUBT, PRESS GANEY MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO AND SHALL NOT BE LIABLE FOR: (A) ANY FAILURE BY PRESS GANEY OR CLIENT TO OBTAIN 'PRIOR EXPRESS CONSENT' OR 'PRIOR EXPRESS WRITTEN CONSENT' AS APPLICABLE UNDER THE TCPA OR THE FCC'S TCPA RULES TO PLACE VOICE TELEPHONE CALLS AND, FOR WIRELESS TELEPHONE NUMBERS, VOICE CALLS AND TEXT MESSAGES; (B) ANY INACCURATE DATA, INFORMATION OR INSTRUCTIONS PROVIDED BY CLIENT TO PRESS GANEY; OR (C) ANY USE OF AN AUTOMATIC TELEPHONE DIALING SYSTEM OR A PRERECORDED VOICE BY PRESS GANEY OR CLIENT.
- d. THE WARRANTIES SET FORTH IN THIS SECTION 11 (WARRANTY) ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

**12. TAXES.** Notwithstanding the fact that Client may be a tax-exempt entity, Client will be responsible for payment of any sales, use, excise, value-added, personal property, export, import, withholding, transaction privilege, or similarly imposed taxes (collectively, "Taxes") assessed or imposed by any tax authority with respect to the payments Client makes to Press Ganey under this Agreement (except for any taxes based on Press Ganey's net income or employees). The pricing set forth in any SOW, as amended from time-to-time by the Parties, does not include any Taxes. Client agrees that, if at any time during or after the Term, any tax authority asserting jurisdiction over Client or any Client facility assesses liability for Taxes, imposes one (1) or more Taxes or revokes (through legislation or agency decision) any tax exemption previously relied upon by Client, Client shall assume full responsibility for and make all payments of any and all Taxes due.

### **13. TERMINATION AND SURVIVAL.**

- a. **Cancellation.** Any cancellation of this Agreement by Client not in accordance with this Section 13 (Termination and Survival) shall trigger a payment, due in full, upon demand by Press Ganey in an amount equal to the balance of the fees due to Press Ganey during the Term of the Agreement ("Liquidated Damages"). The Parties do not intend the Liquidated Damages to constitute a penalty, but rather compensation for harm caused to Press Ganey that is difficult to determine as of the Effective Date of this Agreement.
- b. **Termination.** In the case of material breach of the material terms of this Agreement or violation of any laws described in Sections 6(b) or 9, the non-breaching Party shall notify the breaching Party of the suspected breach in writing and provide a reasonably detailed description of the breach. The breaching Party shall have forty-five (45) days to cure the breach described in that notice. In the event the breaching Party is unable to cure that breach within that forty-five (45) day period, the other Party may terminate this Agreement by providing a written termination notice to the breaching Party but may not make a claim for future damages under this Agreement. In lieu of terminating this Agreement as provided for in this Section 13(b), Press Ganey may suspend the provision of the Services to Client until Client has cured the breach to Press Ganey's satisfaction. No Liquidated Damages shall be due for any valid termination of this Agreement under this Section 13(b).
- c. Where a BAA has been executed between the Parties, and where there has been a material breach of said BAA by Press Ganey for which no cure is possible and in which the BAA and relationship must be terminated, no Liquidated Damages shall be due.

- d. The Parties understand and agree that according to the CAHPS Quality Assurance Guidelines, Client may only change CAHPS vendors at the start of a calendar quarter, and that Press Ganey, as Client's CAHPS vendor, must complete certain activities related to CAHPS Services beyond Client's final applicable patient discharge date, in accordance with such CAHPS Quality Assurance Guidelines and other CMS regulations. Therefore, notwithstanding any purported termination by Client of any CAHPS Services, (i) this MSA, the applicable SOW(s), and such CAHPS Services shall continue with respect to Client's applicable patient discharges occurring through the current calendar quarter and (ii) the obligations of each Party regarding such CAHPS Services, including but not limited to Client's obligation to pay applicable fees to Press Ganey, shall continue through the calendar quarter subsequent to Client's final applicable patient discharge date.
- e. **Survival.** In addition to any other provisions herein, which by their terms, survive the termination or expiration of this Agreement or that must survive in order to give meaning to other provisions of the Agreement, the following Sections of this Agreement will survive termination or expiration of this Agreement: 6 (Consents/Authorizations), 7 (Ownership and Intellectual Property), 8 (Confidentiality), 9 (Compliance Obligations), 10 (Quality Reporting), 12 (Taxes), 14 (Indemnification and Limitation of Liability), 16(f) (Choice of Law), and 16(g) (Dispute Resolution).

#### 14. INDEMNIFICATION AND LIMITATION OF LIABILITY.

- a. **Indemnification.** Subject to the terms and conditions set forth herein, Client shall indemnify, defend, and hold harmless Press Ganey, and its respective directors, officers, parent entities, subsidiaries, employees, shareholders, agents and its and their successors and assigns from and against any and all third-party claims, actions, suits, liabilities, judgments, losses, damages, reasonable costs, reasonable charges, reasonable attorneys' fees and/or expenses incurred or suffered by Press Ganey arising out of, relating to or in connection with (i) Client's performance under this contract, including the acts, errors or omissions of any third party, (ii) Client's breach of this Agreement, including, but not limited to, Client's failure to obtain any consents or authorizations required by Section 6(a) or (iii) Client's violation of applicable law, including, but not limited to, any violation of the laws described in Section 6(b). Press Ganey shall indemnify, defend, and hold harmless Client, and its respective directors, officers, parent entities, subsidiaries, employees from and against any and all third-party claims, actions, losses, damages, and/or liability related to the infringement or misappropriation by Press Ganey of any patent, patent application issued or published on or before the Effective Date, copyright or trademark of a third party in the United States and for any related costs or expenses (including reasonable attorney's fees) incurred by Client.
- b. **Limitation of Liability.** Notwithstanding any other provision of this Agreement and except as specified in Section 13(a) (Termination and Survival) or where this exclusion or restriction of liability would be void or ineffective under applicable law, in no event will either Party be liable to the other under, in connection with or related to this Agreement for any special, indirect, consequential, exemplary or punitive damages (including, without limitation, loss of profits or revenues, loss of goodwill, penalties or withholding of reimbursement by a health care payer, state/federal agency or other entity) whether based on breach of contract, warranty, tort, product liability or any other legal theory, even if that Party has been advised of the possibility of such damages. The Parties further agree that, notwithstanding any other provision of this Agreement, the BAA, or any other agreement between the Parties or exhibit hereto, Press Ganey's total cumulative liability under, in connection with or related to this Agreement or in furtherance of the Agreement's provisions or objectives, including but not limited to liability under the BAA or any other agreement between the Parties or exhibit hereto, shall be limited to actual, direct damages not to exceed the amount paid (less any refunds or credits) by Client to Press Ganey during the twelve (12) month period preceding the date of the claim.

- 15. **NOTICES.** Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective two (2) days after they are delivered or when received, whichever occurs first, and

shall be sufficient if given in writing, hand delivered, sent by overnight courier or First Class United States Mail, postage prepaid. Refusal to accept delivery will be deemed receipt. A Party may change its notice address for purposes of this Agreement by giving written notice to the other Party. Notice locations for the Parties are as follows:

Press Ganey:

Press Ganey Associates LLC (d/b/a Press  
Ganey Associates, Inc.)  
1173 Ignition Drive  
South Bend IN 46601  
Attn: Contracts Dept.  
With a copy to: [Contracts@pressganey.com](mailto:Contracts@pressganey.com)

Client:

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## 16. MISCELLANEOUS.

- a. **Independent Contractor.** Press Ganey is an independent contractor to Client and nothing contained in this Agreement shall be construed as creating or implying a legal partnership, agency, joint venture or employment relationship between the Parties, nor shall either Party have the right, power or authority, whether express or implied, to assume, create or incur any expense, liability or obligation, whether express or implied, on behalf of the other Party.
- b. **Assignment.** Neither Party may assign this Agreement without the express written consent of the other Party. Notwithstanding the foregoing, either Party may, upon proper notice to the other Party, assign this Agreement to any affiliate or entity resulting from the sale, combination, or transfer of all or substantially all of the assets, capital stock, or membership interest, or from any other corporate form of reorganization by or of a Party. Any permitted assignee or successor of Client shall acknowledge in writing that the terms and conditions of this Agreement shall continue in full force and effect through the end of the Term after the date of such permitted assignment or succession.
- c. **Severability and Amendment.** If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision herein or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted from this Agreement to the minimum extent necessary to cure such violation. The Parties further agree that in the event that a Party reasonably determines that the performance of any Services is deemed to be a violation of any statute, regulation, or other binding requirement by that Party, the Parties agree to negotiate in good faith to amend the Agreement, to the extent possible consistent with its purposes, to conform to the amended legal requirement.
- d. **Waiver.** No provision of or right or obligation in this Agreement shall be deemed waived by a Party unless such waiver is in writing and signed by the Party against whom enforcement is sought. The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement.
- e. **Force Majeure.** Except for Client's obligations to make payments to Press Ganey under this Agreement, neither Party shall be liable under, or in default of, this Agreement for failure to perform its obligations hereunder if such failure arises out of causes beyond such Party's reasonable control and without its fault or negligence. Such causes or conditions include, but shall not be limited to, act of God, war, terrorism, civil disturbance, court order, natural disaster, or any other cause beyond the reasonable control of the affected party (a "force majeure"). However, if by reason of a force majeure either Party shall be rendered unable to carry out its obligations under this Agreement, either in whole or part, then such Party shall give notice and full particulars of such force majeure in writing to the other Party reasonably soon after occurrence of the

event or course relied upon. The Party providing notice of a force majeure shall endeavor to remove or overcome such inability with all reasonable effort.

- f. **Choice of Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Indiana, without regard to its conflicts of laws rules.
- g. **Dispute Resolution.** Any controversy or claim arising out of or related to this Agreement or the breach thereof shall be resolved by the Parties through binding arbitration in Indiana pursuant to the commercial arbitration rules of the American Arbitration Association (“AAA”) and judgment on any award rendered by the arbitrator shall be final and non-appealable and may be entered in any court of competent jurisdiction. The arbitration proceedings must be conducted in the English language. Arbitration shall be initiated by service of the demand for arbitration within a reasonable time after the claim has arisen. In no event may arbitration be demanded after the date the claim would be barred by the applicable statute of limitations. The arbitrator will be chosen by mutual agreement of the Parties. If the Parties fail to reach agreement within thirty (30) days of service of the demand for arbitration, the arbitrator will be chosen by the AAA. The foregoing notwithstanding, Press Ganey reserves the right to invoke the jurisdiction of any competent court to remedy or prevent violation of any provision of this Agreement.
- h. **Entire Agreement.** This Agreement, associated SOWs and any other exhibits hereby extinguish and supersede all previous and contemporaneous agreements, understandings and communications, whether oral or written, between the Parties and constitute the entire understanding between the Parties with respect to the subject matter herein and may not be modified or amended except by written agreement executed by both Parties, unless otherwise specified herein. The Parties acknowledge that this Agreement may need to be modified to ensure compliance and consistency with applicable law and changes thereto, including but not limited to the TCPA, and the Parties agree to amend the Agreement, at any time or from time to time, for such purposes.
- i. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of Press Ganey and Client and no third party beneficiary status shall be created with respect to any other entity or person.
- j. **Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or by electronic mail in portable document format will be effective as delivery of a manually executed signature page of this Agreement.

### Signature Page Follows

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the Effective Date.

<b>KERN MEDICAL SURGERY CENTER (Client #49741)</b>	<b>PRESS GANEY ASSOCIATES LLC (D/B/A PRESS GANEY ASSOCIATES, INC.)</b>
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By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

Pricing contained herein is valid for a period of thirty (30) days, thereafter, is subject to change.

**EXHIBIT A**  
**OUTPATIENT AND AMBULATORY SURGERY**  
**CAHPS REGULATORY SURVEY**  
**STATEMENT OF WORK**

This Statement of Work ("SOW") is entered into as of **October 1, 2024** ("Effective Date") by and between **Press Ganey Associates LLC (d/b/a Press Ganey Associates, Inc.)**, an Indiana limited liability company ("Press Ganey") and **Kern Medical Surgery Center** ("Client," and together with Press Ganey, the "Parties") pursuant to and subject to the terms and conditions of the Master Services Agreement between the Parties effective **October 1, 2024**, (the "MSA"). Capitalized terms not defined in this SOW will have the meanings assigned to them in the MSA.

**1. SERVICE SUMMARY.**

- a. Press Ganey shall use commercially reasonable efforts to:
  - Create and send multiple versions of the survey tool, as necessary and as requested by Client;
    - The Outpatient and Ambulatory Surgery CAHPS ("OAS CAHPS") portion of the survey cannot be altered. Supplemental questions must comply with the Centers for Medicare and Medicaid Services ("CMS") guidelines.
  - Follow the procedures and specifications as prescribed by CMS
    - Administer the survey based on the timelines prescribed by CMS for each contracted OAS CAHPS client, if Client has transmitted data to Press Ganey by the defined data submission deadline;
      - An OAS CAHPS client/facility is defined as a single CMS Certification Number (CCN)
    - Submit data to CMS at specified time
    - Limit patient level data to protect respondent identity
  - Provide access to survey images or interview recordings, if respondent provides consent to share their identity linked to their responses;
  - Provide a worldwide, royalty-free non-exclusive, limited, non-transferable, non-assignable, non-sublicensable license to use Press Ganey's Patient Experience web-based application(s), for an unlimited number of users at each facility; client must designate a primary root user who will be responsible for user access and management of adding, maintaining and deleting users for their organization. For the avoidance of doubt, Client shall have no right or license to use any source code associated with the application and agrees not to reverse engineer the application or otherwise attempt to obtain the source code for the application or make any other use of the application except as authorized by Press Ganey in writing;
  - Offer Client the ability to monitor the number of surveys administered and returned;
  - Provide the opportunity to review recommendations and other content for improvement related to major service lines located in the Press Ganey Solution Starter;
  - Provide access to Press Ganey's Online Community – an information exchange forum that allows facilities to review industry best practices and collaborative solutions for improving patient satisfaction;
  - Offer educational networking opportunities with other Press Ganey clients through the National Client Conference and Regional Education Symposiums; and

- Provide subscriptions to Press Ganey publications.
- b. Patient Survey Comments. Press Ganey shall use commercially reasonable efforts to:
  - Transcribe all patient survey comments made in English collected via mail or telephone verbatim and make comments available for review through the PG Application, and permit Client's designated staff to review "Hot Comments" in real-time through Press Ganey's "Real Time Comments" application;
  - Provide additional reports through the PG Application on a monthly, quarterly or annual basis upon Client's request; and
- c. Midmarket Expert Support. Press Ganey will provide a healthcare expert to virtually support Client in the following activities:
  - i. Advise in the development and promotion of patient experience strategy
  - ii. Advise on data interpretation, goal setting, and data management
  - iii. Provide training and education
  - iv. Share best practices, toolkits, and Press Ganey publications
  - v. Facilitate networking

Mutually agreed upon onsite days will be charged at a fee of \$3500 per day and Travel expenses for onsite visits will be billed as incurred.

If onsite days are provided, these days can be scheduled in 4- or 8-hour increments only.

- d. Application Support. Press Ganey shall use commercially reasonable efforts to provide access to support specialists who will:
  - Work collaboratively with client on the implementation of new survey products and continuous on-going support:
  - Cooperate with client to determine survey customization that aligns with organizational goals and initiatives. Survey customizations can be made once annually.
  - Recommend appropriate sampling strategies aimed toward obtaining actionable data. Client may request sampling adjustments quarterly, and Press Ganey will cooperate with Client to determine whether the requested adjustment is recommended.
  - Collaborate with client and other Press Ganey staff to align inbound data with expected reporting outputs that drive improvement initiatives.
  - Provide reasonably detailed information from audits proactively performed in connection with Client setup and otherwise throughout the term of the SOW to guide compliance with CAHPS regulations and guidelines. Client acknowledges that this is not an assurance of compliance with any federal and/or state laws, regulations, or requirements. Client understands that it has a separate and distinct non-delegable legal obligation to comply with all federal and/or state laws, regulations or requirements and Press Ganey is not liable for Client's failure to comply with these requirements.

**2. DATA COLLECTION METHODOLOGY.** Provided that Client is in compliance with its obligations under Section 4, Press Ganey shall use commercially reasonable efforts to:



- a. Email & Mail Digital-First Surveying (CMS Web with Mail mixed-mode methodology). Press Ganey shall:
  - Adhere to the administration modes, timing, and wave pattern prescribed by CMS for the OAS CAHPS web with mail mixed-mode methodology;
  - Sample for the minimum number of returns required for the OAS CAHPS program (the "Program");
- b. eSurvey Blend: (Electronic Internet Surveying). Press Ganey shall:
  - Send and process regulatory survey prior to sending email notifications to all survey respondents who provide an email address; and
  - Enter survey results into the Press Ganey database and make them available for viewing via the PG Application within three (3) business days following submission.

### 3. SERVICE ASSURANCE.

- a. Press Ganey Hours of Operations. Press Ganey shall provide access to our associates Monday – Friday, 8:00 am – 8:00 pm EST.
- b. Press Ganey Holidays. Press Ganey recognizes the following ten (10) holidays and all offices are closed on these days or their days of observance:
  - New Year's Day (January 1)
  - Martin Luther King Day (third Monday in January)
  - Memorial Day (last Monday in May)
  - Juneteenth (June 19)
  - Independence Day (July 4)
  - Labor Day (first Monday in September)
  - Thanksgiving (fourth Thursday in November)
  - Day after Thanksgiving
  - Christmas Eve (December 24)
  - Christmas (December 25)
- c. Federal Closures. Press Ganey services may be impacted by federal closures, such as federal holidays, federal shutdown, states of emergency, severe weather, or natural disaster. Every effort will be made to notify the Client and return to normal business operations once the federal closure ends. The timing for this return to normal business operations will be dependent upon the cause and duration of the closure as well as the resulting aftermath. Information on these closures may be found at [www.pressganey.com/terms](http://www.pressganey.com/terms).
- d. Other Closures. There may be occasions where Press Ganey closes all offices, such as for a corporate meeting or a day of community service. If these instances occur, the client will be notified by Press Ganey a minimum of thirty (30) days in advance of such a closure. Information on these closures may be found at [www.pressganey.com/terms](http://www.pressganey.com/terms).

### 4. CLIENT RESPONSIBILITIES. Client shall at all times during the Term:

- Comply with all CMS OAS CAHPS standards and guidelines;
- If using Digital First methodology – ensure that valid and up-to-date email addresses for encounters at the Facility are captured, stored, and transmitted to Press Ganey.



- Provide a list of patients in a data file by the data submission deadline established by Press Ganey. The data file must conform to Press Ganey file specifications;
  - If client chooses to stratify their sample, ensure that each stratification group has a minimum of ten (10) patients to sample per month.
- According to the CAHPS Quality Assurance Guidelines a Client may only change CAHPS vendors at the beginning of a calendar quarter. Therefore, any cancellation will not be valid until after data submission to CMS has been completed for applicable calendar quarter.
- Include the Press Ganey copyright on each survey;
- Recognize that clients are prohibited from altering the OAS CAHPS survey including dropping standard questions or changing the rating scale;
- Comply with certain hardware and software requirements to receive Press Ganey's online services, as amended from time to time, which requirements may be found at [www.pressganey.com/terms](http://www.pressganey.com/terms);
- Designate a root user for the Press Ganey Online System and Applications that is responsible for user access and management of users within the organization;
- Upon the departure of an employee from Client's facility, immediately terminate their access to Press Ganey Applications and other Press Ganey systems;
- Comply with the requirements of sampling strategy and survey distribution methodology. Client recognizes that a common distribution methodology must be used in order to avoid bias, enable comparative data to be valid, and meet the highest standards of reporting. Additionally, Client acknowledges that reporting standards require that a minimum number of surveys must be returned before a statistically-valid report can be issued by Press Ganey. The minimum requirement for this service is thirty (30) returned surveys. Demographic information cannot be provided with less than eleven (11) responses.
- Obtain any and all patient consents, authorizations, and/or approvals required by applicable U.S. federal and state laws, rules, regulations, policy, or industry guidelines to enable Press Ganey to execute its obligations under this Agreement, including but not limited to privacy policies, laws regarding the transfer and/or transmission of data, the Telemarketing Sales Rule and the Telephone Consumer Protection Act (the "TCPA"), and the CTIA Short Code Handbook. (this would replace the standard consent language in the SOW)
- If Client is receiving Text Invitation services, ensure that the Patient providing the "prior express consent" or "prior express written consent" to send texts to a telephone number as required by the TCPA, that Patient is the current subscriber or customary user for that telephone number, and that the consent obtained from such Patient/subscriber has not been revoked.

**5. ACKNOWLEDGEMENT; DISCLAIMER.** THE PARTIES AGREE THAT FOR PURPOSES OF THE TCPA, PRESS GANEY SHALL BE DEEMED TO BE CONTACTING PATIENTS AT THE CLIENT'S DIRECTION, UNDER THE CLIENT'S SUPERVISION, AND FOR THE CLIENT'S BENEFIT AND CLIENT SHALL HAVE SOLE RESPONSIBILITY TO OBTAIN ANY AND ALL NECESSARY CONSENTS FROM PATIENTS AS DEFINED UNDER THE TCPA.

**6. PAYMENT TERMS.**

- a. Contract fees are as indicated on **Attachment A**.

IN WITNESS WHEREOF, the undersigned have executed this Statement of Work as of the Effective Date.

<b>KERN MEDICAL SURGERY CENTER</b> <b>(Client #49741)</b>	<b>PRESS GANEY ASSOCIATES LLC (D/B/A</b> <b>PRESS GANEY ASSOCIATES, INC.)</b>
<b>By:</b>	<b>By:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>

## ATTACHMENT A

1. Beginning **October 1, 2024**, Client shall pay Press Ganey an annual contract fee of \$3,800.00 ("Annual Fee") for the services outlined below which will be invoiced and payable upfront annually.

The Annual Fee includes:

- i. Up to 1,000 mailed surveys annually through the United States Postal Service for the services of:
    - Ambulatory Surgery with OASCAHPS
  - ii. Unlimited email invitations for the services of:
    - Ambulatory Surgery
  - iii. Digital First Surveying for the services of:
    - Ambulatory Surgery with OASCAHPS
  - iv. Comment processing
2. Surveys mailed over the included annual amount will be invoiced monthly as incurred at a rate of \$4.01 per survey, plus any annual increases allowed under the Agreement.
  3. All fees for the 2<sup>nd</sup> and 3<sup>rd</sup> contract years will increase four percent (4%) per year and will continue to be invoiced upfront annually.
  4. Additional facilities and services may be added upon mutual written agreement of the Parties at mutually agreed upon pricing.

**EXHIBIT B**  
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between **Press Ganey Associates LLC (d/b/a Press Ganey Associates, Inc.)**, an Indiana Limited Liability Company with its principal offices at 1173 Ignition Drive, South Bend, Indiana, 46601 (“Press Ganey”), and **Kern Medical Surgery Center** (“Covered Entity”).

**WHEREAS**, Press Ganey and Covered Entity have entered into one or more agreements (the “Underlying Agreement”) pursuant to which Press Ganey is providing certain performance measurement and improvement services to Covered Entity;

**WHEREAS**, in connection with the provision of the performance measurement and improvement services pursuant to the Underlying Agreement, Press Ganey receives from, or creates, receives, maintains or transmits for or on behalf of, Covered Entity certain Protected Health Information (“PHI”) (as defined below) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”);

**WHEREAS**, the Covered Entity is a “covered entity” under the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”); 45 C.F.R. Part 164, Subpart C, the Security Standards for the Protection of Electronic Protected Health Information (“Security Rule”), 45 C.F.R. Part 164 Subpart D, the Notification in the Case of Breach of Unsecured Protected Health Information (“Breach Notification Rule”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) (collectively referred to herein as the “HIPAA Rules”);

**WHEREAS**, Press Ganey, as it receives PHI from, or creates, receives, maintains or transmits PHI for or on behalf of, Covered Entity, is a “business associate” as that term is defined in the HIPAA Rules;

**WHEREAS**, Covered Entity and Press Ganey acknowledge that each has obligations in their respective roles as Covered Entity and Business Associate under the HIPAA Rules; and

**WHEREAS**, the purpose of this Agreement is to provide the Covered Entity with satisfactory assurances for the safeguarding of PHI, as required by the HIPAA Rules;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- 1. DEFINITIONS.** Unless otherwise provided in this Agreement, capitalized terms used herein have the same meanings as those assigned to such terms in the HIPAA Rules.
  - a. “Protected Health Information” or “PHI” shall have the meaning in the HIPAA Rules, 45 C.F.R. § 160.103, limited to the information Press Ganey receives from, or creates, receives, maintains or transmits for or on behalf of, Covered Entity.
- 2. SCOPE OF USE AND DISCLOSURE BY PRESS GANEY OF PHI.**
  - a. Press Ganey shall be permitted to use and disclose PHI as necessary to perform its obligations under the Underlying Agreement, consistent with the HIPAA Rules and applicable laws.
  - b. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Agreement, the Underlying Agreement, or Required by Law, Press Ganey may:

- i. Use PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Press Ganey;
- ii. Disclose PHI in its possession to a third party for the purpose of Press Ganey's proper management and administration or to fulfill any legal responsibilities of Press Ganey; provided, however, that the disclosures are Required by Law or Press Ganey has received written assurances from the third party that the information will be held confidentially, used or further disclosed only as Required by Law or for the purposes for which it was disclosed to such person; and notifies Press Ganey of any instances of which it is aware in which the confidentiality of the information has been breached;
- iii. Aggregate PHI with that of other Covered Entities for the purpose of providing Data Aggregation analyses related to Health Care Operations of Covered Entity. Press Ganey may not disclose the PHI of the Covered Entity to another Covered Entity without the written authorization of the Covered Entity; and,
- iv. De-identify any and all PHI created or received by Press Ganey under this Agreement, provided that the de-identification conforms to the requirements of the Privacy Rule.

**3. OBLIGATIONS OF PRESS GANEY.** In connection with its use and disclosure of PHI, Press Ganey agrees that it will:

- a. Use or further disclose PHI only as permitted or required by this Agreement, the Underlying Agreement or as Required by Law.
- b. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, consistent with the requirements of the HIPAA Rules and comply with the applicable requirements of the Security Rule with respect to electronic PHI.
- c. To the extent practicable, mitigate any harmful effect that is known to Press Ganey of a use or disclosure of PHI by Press Ganey in violation of this Agreement.
- d. To the extent Press Ganey will carry out one or more of the Covered Entity's obligations under the Privacy Rule, Press Ganey shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.
- e. Report to the Covered Entity any unauthorized use or disclosure of PHI, including any Breach of Unsecured PHI under the Breach Notification Rule or breach requiring notification under applicable state data protection laws, within five (5) business days of becoming aware of such unauthorized use or disclosure. Press Ganey will report to the Covered Entity, to the extent possible, the following information:
  - i. The identification of each individual whose PHI was accessed, acquired, used or disclosed during the breach;
  - ii. A brief description of what happened;
  - iii. The date of discovery of the breach;
  - iv. The nature of the unsecured PHI that was involved (e.g., patient names, dates of birth, etc.); and,
  - v. A brief description of what Press Ganey is doing to investigate the breach, to mitigate harm, and to protect against any further breaches.

As well as any other information that the Covered Entity is required to include in notification to the individual under the Breach Notification Rule.

In the event of a Breach of Unsecured PHI, Covered Entity shall have the sole right to determine whether notice is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, media outlets and/or CMS or HHS or others as Required by Law or regulation.

- f. Without unreasonable delay, report to the Covered Entity any successful Security Incident affecting Covered Entity's PHI of which Press Ganey becomes aware. This Section shall constitute notice that Press Ganey periodically receives unsuccessful Security Incidents, including without limitation, activity such as pings and other broadcast attacks on Press Ganey's firewall, port scans, malware (e.g., worms, viruses), unsuccessful log-on attempts, denial-of-service attacks, and any combination of the above, and the parties agree that Press Ganey shall have no further obligation to notify Covered Entity of such unsuccessful Security Incidents.
- g. Upon request of the Secretary of HHS, make available Press Ganey's internal practices, books and records relating to the use and disclosure of PHI for purposes of determining Covered Entity's compliance with the HIPAA Rules, subject to any applicable legal privileges.
- h. Within fifteen (15) days of receiving a written request from the Covered Entity, in accordance with 45 C.F.R. § 164.528 make available the information necessary for the Covered Entity to make an accounting of disclosures of PHI about an individual; or, alternatively, at the request of the Covered Entity, fulfill the request directly based on any disclosures of PHI about the individual made by Press Ganey.
- i. To the extent Press Ganey maintains a Designated Record Set, within fifteen (15) days of receiving a written request from the Covered Entity or an individual for access to any PHI about that individual maintained by Press Ganey in a Designated Record Set, in accordance with 45 C.F.R. § 164.524, make available copies of that information to the Covered Entity or, at its request, to the individual directly.
- j. To the extent Press Ganey maintains a Designated Record Set, within fifteen (15) days of receiving a written request from the Covered Entity, in accordance with 45 C.F.R. § 164.526, incorporate any amendments or corrections to the PHI.
- k. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI, and implement safeguards consistent with the HIPAA Rules for electronic Protected Health Information ("ePHI") that it creates, receives, maintains or transmits on behalf of the Covered Entity.
- l. Enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each subcontractor that creates, receives, maintains or transmits PHI for or on behalf of Press Ganey. Without limiting the foregoing, ensure that the written agreement with each subcontractor obligates the subcontractor to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply herein, including the obligation to return to Press Ganey or destroy the PHI upon termination of the Underlying Agreement.

**4. OBLIGATIONS OF COVERED ENTITY.** The Covered Entity agrees that it:

- a. Has included, and will include, in the Covered Entity's Notice of Privacy Practices required by the Privacy Rule that the Covered Entity may disclose PHI for Health Care Operations purposes.
- b. Will promptly notify Press Ganey in writing of any changes to its Notice of Privacy Practices that may affect the use or disclosure of PHI by Press Ganey.
- c. Has obtained, and will obtain, all consents, authorizations and other permissions necessary or required by laws applicable to the Covered Entity for Press Ganey and the Covered Entity to fulfill their obligations under both this Agreement and the Underlying Agreement.

- d. Will promptly notify Press Ganey in writing of any restrictions on the use and disclosure of PHI that the Covered Entity has agreed to that may affect Press Ganey's ability to perform its obligations under the Underlying Agreement or this Agreement.
- e. Will promptly notify Press Ganey in writing of any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes or revocation may affect Press Ganey's ability to perform its obligations under the Underlying Agreement or this Agreement.
- f. Must maintain reasonable and appropriate administrative, technical and physical safeguards to prevent unauthorized use or disclosure of Press Ganey systems, applications and other assets.
- g. Must limit user access to the Press Ganey systems to only those authorized employees, agents, representatives, and members of its workforce that have a valid business need to access said systems.

## 5. TERMINATION.

- a. Termination for Breach. Upon either Party's knowledge of a material breach or violation of this Agreement by the other Party, the non-breaching Party shall:
  - i. Provide written notice of such breach or violation to the violating Party and an opportunity for the violating Party to cure the breach or violation within ten (10) days ("Cure");
  - ii. Immediately terminate this Agreement and the Underlying Agreement if the violating Party has breached a material term of this Agreement and Cure is not possible; or,
  - iii. If neither termination nor Cure is feasible, report the violation to the Secretary of HHS.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Underlying Agreement.
- c. Effect of Termination.
  - i. Termination of this Agreement will result in termination of the Underlying Agreement.
  - ii. Within sixty (60) days of termination of this Agreement or the Underlying Agreement, Press Ganey will destroy all PHI received from the Covered Entity or created or received by Press Ganey on behalf of the Covered Entity that Press Ganey still maintains and retain no copies of such PHI; provided that if such destruction is not feasible, Press Ganey shall extend the protections of this Agreement to the PHI and limit further uses and disclosures of PHI to those purposes that make the destruction infeasible for as long as Press Ganey maintains such PHI.

## 6. COVERED ENTITY. For the purposes of this Agreement, Covered Entity shall include the following facilities:

## 7. AMENDMENT. Press Ganey and the Covered Entity agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity or Press Ganey to comply with the requirements of the HIPAA Rules and any applicable state privacy or data protection laws.

- 8. **CMS DATA.** Certain Services involve PHI transmitted directly from The Centers for Medicare and Medicaid Services ("CMS") to Press Ganey. PHI transmitted from CMS to Press Ganey shall be governed by an applicable Data Use Agreement ("DUA") between Press Ganey and CMS, as required by CMS. PHI transmitted by Covered Entity to Press Ganey related specifically to those Certain Services described in the preceding sentence shall be subject to the BAA, however, in the event that any provision of this BAA conflicts with Business Associate's obligations under its DUA with CMS or any other requirements imposed by CMS upon Business Associate as a CAHPS

vendor, the terms and obligations of the DUA and CMS requirements as a CAHPS vendor shall supersede any requirement set forth therein.

**9. 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, cyber liability insurance on an occurrence basis. 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, no more than once annually.

**10. Indemnification.** Subject to any limitation(s) of liability in the applicable Underlying Agreement, Business Associate shall indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all third party losses, damages, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting directly 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.

**11. SURVIVAL.** The obligations of Press Ganey under Section 3 (Obligations of Press Ganey), Section 5(c) and this Section 9 of this Agreement shall survive termination of this Agreement.

**12. NO THIRD PARTY BENEFICIARIES.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**13. INDEPENDENT CONSULTANT.** For the purposes of this Agreement, the Parties understand and agree that Press Ganey is an independent consultant of the Covered Entity, and not the Covered Entity's agent.

**14. NOTICES.** Any notices under this Agreement shall be made via U.S. Mail or express courier to the address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate:

Press Ganey Associates  
1173 Ignition Drive  
South Bend, IN 46601  
Attn: Contracts  
Fax: 574-245-3933

If to Covered Entity:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

HIPAA Privacy Officer at [privacy@pressganey.com](mailto:privacy@pressganey.com)

**15. EFFECTIVE DATE.** This Agreement shall be effective as of **October 1, 2024** ("Effective Date").

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the Effective Date.



<b>KERN MEDICAL SURGERY CENTER (Client #49741)</b>	<b>PRESS GANEY ASSOCIATES LLC (D/B/A PRESS GANEY ASSOCIATES, INC.)</b>
<b>By:</b>	<b>By:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Shannon Hochstein  
Kern County Hospital Authority



**BOARD OF MANAGERS  
REGULAR MEETING  
KERN MEDICAL SURGERY CENTER, LLC**

August 21, 2024

**Subject:** Proposed credentialing recommendations

**Recommended Action:** Approve

**Summary:**

It is recommended that your Board approve the attached credentialing recommendations for Kern Medical Surgery Center, LLC.

**CREDENTIALING RECOMMENDATIONS TO BOARD OF MANAGERS**  
**August 6, 2024**

**Initial Appointments:** The following practitioner(s) are recommended for initial appointment and clinical privileges as delineated by the respective department chair:

*Alexis Conley MD, Podiatrists*  
*Timothy Vo MD, Podiatrists*  
*Mereat Askander, Podiatric Medical Resident*

**APP Initial Appointments:**

*None*

**Reappointments:** The following practitioner(s) are recommended for reappointment and clinical privileges as delineated by the respective department chair:

*Najib Ussef MD, Orthopedics*

**APP Reappointments:**

*None*



Kern Medical Surgery Center, LLC  
9300 Stockdale Hwy, Suite 200  
Bakersfield, CA. 93311  
661-964-2470

**BOARD OF MANAGERS  
REGULAR MEETING  
KERN MEDICAL SURGERY CENTER, LLC**

August 21, 2024

**Subject:** Proposed retroactive engagement letter between Kern Medical Surgery Center, LLC (Surgery Center) and Brown Armstrong Accountancy Corporation to perform an Employee Retirement Income Security Act of 1974 (ERISA) audit for the 401(k) Profit Sharing Plan and Trust for calendar years ending 2021, 2022, and 2023

**Recommended Action:** Approve; Authorize Chief Executive Officer to sign

**Summary:** While attempting to obtain a copy of the Form 5500 for the LLC 401(k) plan for 2022, it was discovered that a Form 5500 had not been filed for 2021-2023 for the Surgery Center. This information was requested for the renewal of the Plan's fiduciary liability policy.

Form 5500s are required to be filed with the IRS under ERISA to apprise the federal government of a retirement plan's financial condition, investment holdings and other information.

As of 2021, the Surgery Center's 401(k) Plan is required to conduct an annual audit and file a Form 5500 (this is the first year the plan met the threshold for the 5500-filing requirement). Unfortunately, this did not happen. Apparently, the 401(k)-plan administrator requested an auditor's report from someone at the Surgery Center so they could complete the 5500, but they are unable to determine to whom the requested was mailed.

We have requested an extension for filing the 2023 form, which has been granted. However, the 2021 and 2022 forms will be filed late. There will likely be a penalty for late filing for the first two years; we estimate the penalty will be approximately \$4,000.

Therefore, it is recommended that your Board retroactively approve Engagement Letter with Brown Armstrong Accountancy Corporation to provide audit and reporting services for Plan years 2021, 2022, and 2023 and authorize the Chief Executive Officer to sign.

July 10, 2024

The Board of Managers,  
Kern Medical Surgery Center LL 401(K) Profit Sharing Plan & Trust  
9300 Stockdale Highway  
Bakersfield, CA 93311

Dear Board of Managers:

We are pleased to confirm our understanding of the services we are to provide for Kern Medical Surgery Center LL 401(K) Profit Sharing Plan & Trust (the Plan) for each of the years ended December 31, 2021, December 31, 2022, and December 31, 2023, in connection with its annual reporting obligation under the Employee Retirement Income Security Act of 1974.

### **Audit Scope and Objectives**

You have requested that we perform an Employee Retirement Income Security Act of 1974 (ERISA) Section 103(a)(3)(C) audit and report on the financial statements of the Plan, an employee benefit plan subject to the ERISA, as permitted by ERISA Section 103(a)(3)(C) ERISA Section 103(a)(3)(C) audit. The financial statements comprise the statement of net assets available for benefits as of December 31, 2021, December 31, 2022, and December 31, 2023 and the related statements of changes in net assets available for benefits for the years then ended, and the disclosures (collectively, the "financial statements"). As part of our audits, we will report on the supplemental schedules required by the Department of Labor's (DOL) Rules and Regulations for Reporting and Disclosure under ERISA (ERISA-required supplemental schedules) for the years ended December 31, 2021, December 31, 2022, and December 31, 2023, in accordance with auditing standards generally accepted in the United States of America (GAAS). These schedules are presented for the purpose of additional analysis and are not a required part of the financial statements, but are supplementary information required by the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

The financial statements and ERISA-required supplemental schedules are required to be included in the Plan's Form 5500 filing with the Employee Benefits Security Administration (EBSA) of the DOL.

Except as described in the following paragraph, the objectives of our audits are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements.

**BAKERSFIELD**  
4200 Trustun Avenue, Suite 300  
Bakersfield, CA 93309  
661-324-4971

**FRESNO**  
10 River Park Place East, Suite 208  
Fresno, CA 93720  
559-476-3592

**STOCKTON**  
2423 West March Lane, Suite 202  
Stockton, CA 95207  
209-451-4833

The Board of Managers,  
Kern Medical Surgery Center LL 401(K) Profit Sharing Plan & Trust  
July 10, 2024  
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You have determined it is permissible in the circumstances and elected to have the audit of the Plan's financial statements performed in accordance with ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. As permitted by ERISA Section 103(a)(3)(C), our audit need not extend to any statements or information related to assets held for investment of the Plan (investment information) by Empower Annuity Insurance Company of America (Empower), the trustee, which is a bank or similar institution or insurance carrier that is regulated, supervised, and subject to periodic examination by a state or federal agency, that prepared and certified the statements or information regarding assets so held in accordance with 29 CFR 2520.103-5 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

#### **Auditor's Responsibilities for the Audit of the Financial Statements**

We will conduct our audit in accordance with GAAS. Those standards require that we are independent and that we fulfill our other ethical responsibilities relevant to the audit. For an ERISA Section 103(a)(3)(C) audit, the audit will not extend to the certified investment information, except for obtaining and reading the certification, comparing the certified investment information with the related information presented and disclosed in the financial statements, and reading the disclosures relating to the certified investment information to assess whether they are in accordance with the presentation and disclosure requirements of accounting principles generally accepted in the United States of America (GAAP). Accordingly, the objective of an ERISA Section 103(a)(3)(C) audit is not to express an opinion about whether the financial statements as a whole are presented fairly, in all material respects, in accordance with GAAP.

As part of an audit in accordance with GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit.

We will evaluate the appropriateness of the accounting policies used and the reasonableness of significant accounting estimates made by management. We will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations, including prohibited transactions with parties in interest or other violations of ERISA rules and regulations, that are attributable to the Plan or to acts by management or employees acting on behalf of the Plan.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is an unavoidable risk that some material misstatements may not be detected by us, even though the audit is properly planned and performed in accordance with GAAS, except as previously noted. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of

The Board of Managers,  
Kern Medical Surgery Center LL 401(K) Profit Sharing Plan & Trust  
July 10, 2024  
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laws or governmental regulations that come to our attention, unless clearly inconsequential and will include prohibited transactions in the supplemental schedule of nonexempt transactions as required by the instructions to Form 5500. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We will obtain an understanding of the Plan and its environment, including the system of internal control, sufficient to identify and assess the risks of material misstatement of the financial statements, whether due to error or fraud, and to design and perform audit procedures responsive to those risks and obtain evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentation, or the override of internal control. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to you and those charged with governance internal control related matters that are required to be communicated under professional standards.

According to GAAS, significant risks include management override of controls, and GAAS presumes that revenue recognition is a significant risk. Accordingly, we have considered these as significant risks.

We will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern for a reasonable period of time.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts and direct confirmation of investments except those certified to by the trustee, plan obligations, and certain other assets and liabilities by correspondence with financial institutions, and other third parties. We will also request written representations from your attorneys as part of the engagement.

We may, from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We will communicate with management and those charged with governance certain matters as required by GAAS, including reportable findings identified during the audit of the Plan's financial statements as a result of testing relevant plan provisions.

As part of our audit, we will perform certain procedures as required by GAAS, directed at considering the Plan's compliance with applicable Internal Revenue Code (IRC) requirements for tax-exempt status, including whether management has performed relevant IRC compliance tests and has corrected or intends to correct failures. As we conduct our audit, we will be aware of the possibility that events affecting the Plan's tax status may have occurred. Similarly, we will be aware of the possibility that events affecting the Plan's compliance with the requirements of ERISA may have occurred. We will inform you of any instances of tax or ERISA noncompliance that come to our attention during the course of our audit. You should recognize, however, that our audit is not designed to, nor is it intended to, determine the Plan's overall compliance with applicable provisions of the IRC or ERISA.

The information included in the ERISA-required supplemental schedules, other than that agreed to or derived from the certified investment information, will be subjected to auditing procedures applied in the audit of the financial statements and certain additional procedures in accordance with GAAS. Accordingly, our opinion will state whether the form and content of the supplemental schedules, other than the information agreed to or derived from the certified investment information, are presented, in all material respects, in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA and whether the information in the supplemental schedules related to assets held by and certified to by a qualified institution agrees to or is derived from, in all material respects, the information prepared and certified by an institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

Our ERISA Section 103(a)(3)(C) audit of the financial statements does not relieve you of your responsibilities.

#### **Responsibilities of Management for the Financial Statements**

Our audit will be conducted on the basis that you acknowledge and understand your responsibility for designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for the selection and application of accounting principles; for establishing an accounting and financial reporting process for determining appropriate value measurements; and for the preparation and fair presentation of the financial statements in conformity with GAAP. You are also responsible for making drafts of financial statements, all financial records, and related information available to us; for the accuracy and completeness of that information (including information from outside of the general and subsidiary ledgers); and for the evaluation of whether there are any conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.



You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, identification of all related parties, parties in interest, and all related-party and parties-in-interest relationships and transactions, and other matters; (2) additional information that we may request for the purpose of the audit; and (3) unrestricted access to persons within the Plan from whom we determine it necessary to obtain audit evidence. You are also responsible for maintaining a current plan instrument, including all plan amendments; and for administering the Plan and determining that the Plan's transactions that are presented and disclosed in the financial statements are in conformity with the Plan's provisions, including maintaining sufficient records with respect to each of the participants to determine the benefits due or which may become due to such participants.

You are also responsible for determining whether (1) an ERISA Section 103(a)(3)(C) audit is permissible under the circumstances; (2) the investment information is prepared and certified by a qualified institution as described in 29 CFR 2520.103-8; (3) the certification meets the requirements in 29 CFR 2520.103-5; and (4) the certified investment information is appropriately measured, presented, and disclosed in accordance with GAAP. You are also responsible for providing to us, prior to the dating of our report, a draft of the Plan's Form 5500 that is substantially complete. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Plan involving (1) Plan management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Plan received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the Plan complies with applicable laws and regulations. You are responsible for the presentation of the ERISA-required supplemental schedules and that they were derived from, and relate directly to, the underlying accounting and other records used to prepare the financial statements, including their form and content, in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon.

You agree to assume all management responsibilities for the Form 5500 preparation services and any other nonattest services we provide; oversee the services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

### **Other Services**

We will also assist in preparing the financial statements of the Plan in conformity with GAAP based on information provided by you.

### **Engagement Administration, Fees, and Other**

We understand that your personnel will prepare all schedules, analyses, and confirmations we request and will locate any invoices or other documents selected by us for testing.

The audit documentation for this engagement is the property of Brown Armstrong Accountancy Corporation and constitutes confidential information. However, we may be requested to make certain audit documentation available to the U.S. Department of Labor pursuant to authority given to it by law. If requested, access to such audit documentation will be provided under the supervision of Brown Armstrong Accountancy Corporation personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the U.S. Department of Labor. The U.S. Department of Labor may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies.

Neeraj Datta is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it. We expect to begin our audit on approximately July 22, 2024, and issue our report no later than October 15, 2024.

Our fees for the above services will be \$30,000. You will also be billed for travel and other out-of-pocket costs such as report production, word processing, postage, confirmation service provider fees, etc. The fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagement. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account balance becomes 90 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures from the date of termination.

This agreement may be terminated by either party, with or without cause, upon thirty (30) days' written notice ("Notice of Termination"). The Notice of Termination will be deemed effective 15 days after personal delivery, or 20 days after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may immediately terminate this agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this agreement through no fault of the Party initiating the termination.

All disputes under this agreement shall be submitted to mediation. Each party shall designate an executive officer empowered to attempt to resolve the dispute. Should the designated representatives be unable to agree on a resolution, a competent and impartial third party acceptable to both parties shall be appointed to mediate. Each disputing party shall pay an equal percentage of the mediator's fees and expenses. No suit or arbitration proceedings shall be commenced under this agreement until at least 60 days after the mediator's first meeting with the involved parties. In the event that the dispute is required to be litigated, the court shall be authorized to assess litigation costs against any party found not to have participated in the mediation process in good faith.

The Board of Managers  
Kern Medical Surgery Center LL 401(K) Profit Sharing Plan & Trust  
July 10, 2024  
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Both Parties agree that the provisions of the agreement will be construed pursuant to the laws of the State of California, and that venue of any action relating thereto shall be in the Superior Court of and for Kern County. Further, by signing this agreement both parties expressly consent to the personal jurisdiction of the Kern County Superior Court.

During the course of any work or activities under this agreement Brown Armstrong Accountancy Corporation shall maintain 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 coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate.

### **Reporting**

We will issue a written report upon completion of our audit of the Plan's financial statements and ERISA-required supplemental schedules. Our report will be addressed to the Administrator and the Trustee of the Plan. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to further modify our report, add a separate section, or add an emphasis-of-matter or other-matter paragraph to our auditor's report, or if necessary, withdraw from this engagement. If our report includes other modifications, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the engagement, we may decline to issue a report or withdraw from this engagement.

We appreciate the opportunity to be of service to the Plan and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the attached copy and return it to us.

Sincerely,

BROWN ARMSTRONG  
ACCOUNTANCY CORPORATION



By: Neeraj Datta, CPA, CGMA

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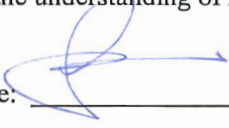
Enclosure

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The Board of Managers  
Kern Medical Surgery Center LL 401(K) Profit Sharing Plan & Trust  
July 10, 2024  
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**RESPONSE:**

This letter correctly sets forth the understanding of Kern Medical Surgery Center 401(k) Savings Plan

Plan Administrator's signature:  \_\_\_\_\_

Title: Benefits and Compensation Administrator/Plan Administrator

Date: July 25, 2024

Governance signature:  \_\_\_\_\_

Title: Chief Executive Officer and Trustee

Date: July 25, 2024

APPROVED AS TO FORM  
Legal Services Department

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

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on August 21, 2024, 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 21, 2024, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Maria Saenz, Applicant  
v. Kern Medical Center, Defendant, Workers' Compensation Appeals Board Case  
Numbers ADJ8168690, ADJ9837188, ADJ8911633 –

**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 21, 2024, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

- X   CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(e)(3)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection –