



## **AGENDA**

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

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

Regular Meeting  
Wednesday, September 20, 2023

11:30 A.M.

#### **BOARD TO RECONVENE**

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on August 16, 2023 –  
APPROVE

CA

- 4) Proposed appointment of Ralph Garcia-Pacheco Suarez, M.D., as Chair, Department of Medicine, effective September 20, 2023 –  
RATIFY APPOINTMENT

CA

- 5) Proposed Kern County Hospital Authority Organizational Chart, effective September 20, 2023 –  
APPROVE

CA

- 6) Proposed Agreement with Prime Actuarial Consulting LLC, doing business as Bickmore Actuarial, an independent contractor, for actuarial analysis of Kern Medical Center self-insured malpractice and workers' compensation programs from October 1, 2023 through September 30, 2028, in an amount not to exceed \$55,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Master Agreement with Flex Financial, a division of Stryker Sales, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of surgical equipment from September 20, 2023 through July 19, 2025, in an amount not to exceed \$2,023,299 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN



CA

- 8) Proposed Purchase Order with Heredia Cabling Solutions, an independent contractor, for purchase of infrastructure updates to support the Philips Telemetry patient monitoring system, effective September 20, 2023, in an amount not to exceed \$436,657 –  
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

CA

- 9) Proposed Personal/Professional Services Agreement with Atlas Copco Compressors, LLC, doing business as Accurate Air Engineering, an independent contractor, containing nonstandard terms and conditions, for preventive maintenance of vacuum pumps, air compressors and medical air filters from September 20, 2023 through September 19, 2026, in an amount not to exceed \$300,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed retroactive Second Amendment to Kern County Hospital Authority Defined Contribution Plan for Physician Employees, amending the definition of “Eligible Employee” to exclude the chief medical officer from participation, effective August 26, 2023 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Fourth Amendment to Operating Agreement of Kern Medical Surgery Center, LLC, increasing the number of managers from three to seven and appointing the Board of Governors as the managers, effective October 1, 2023 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Reference Laboratory Services Agreement with The Trustees of the University of Pennsylvania, as owner and operator of Hospital of the University of Pennsylvania on behalf of its Department of Pathology and Laboratory Medicine, an independent contractor, containing nonstandard terms and conditions, for comprehensive testing and reference laboratory services, in an amount not to exceed \$100,000, effective September 20, 2023 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed retroactive Application and Agreement with Board of Administration of the Public Employees’ Retirement System, acting on behalf of the State of California, to extend coverage under Section 218 of the Federal Social Security Act to Kern County Employees’ Retirement Association members, effective July 1, 2016, in an amount to be determined by the State –  
APPROVE; ADOPT RESOLUTION; AUTHORIZE VICE PRESIDENT, HUMAN RESOURCES AS AUTHORIZED AGENT TO SIGN APPLICATION AND AGREEMENT; DIRECT HUMAN RESOURCES TO EFFECT THE PURPOSES OF THE RESOLUTION

CA

- 14) Proposed Amendment No. 1 to Agreement 75622 with Ishaan S. Kalha, M.D, a contract employee, for professional medical services in the Department of Medicine, for the period of December 10, 2022 through December 9, 2025, increasing the rates for excess call coverage, and increasing the maximum payable by \$200,000, from \$1,500,000 to \$1,700,000, to cover the term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Amendment No. 1 to Agreement 103-2022 with Jack C. Hou, M.D., a contract employee, for professional medical services in the Department of Surgery, for the period of September 22, 2022 through September 21, 2023, extending the term for one year from September 22, 2023 through September 21, 2024, and increasing the maximum payable by \$890,000, from \$890,000 to \$1,780,000, to cover the term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed retroactive acceptance of donation of travel and related expenses from Oracle Health for one Kern Medical Center employee to attend the Oracle Health CloudWorld Conference in Las Vegas, Nevada, from September 18-21, 2023 –  
APPROVE; ADOPT RESOLUTION

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

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

CA

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

CA

- 20) Claims and Lawsuits Filed as of August 31, 2023 –  
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

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

- 23) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(d)(4)) Number of cases: One (1) Based on facts and circumstances, the Board of Governors has decided to initiate or is deciding whether to initiate litigation –
- 24) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Christopher Harkins, Plaintiff, v. Kern County Hospital Authority, a municipal corporation; and DOES 1 through 50, inclusive, Defendants, Kern County Superior Court Case No. BCV-23-102237 DRZ –
- 25) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1633-M –
- 26) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –
- 27) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB –
- 28) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –
- 29) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, OCTOBER 18, 2023 AT 11:30 A.M.

## **SUPPORTING DOCUMENTATION FOR AGENDA ITEMS**

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

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

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

20) CLAIMS AND LAWSUITS FILED AS OF AUGUST 31, 2023 –  
RECEIVE AND FILE

- A) Claim in the matter of Monica Flores Hernandez
- B) Claim in the matter of Kathryn Ann Phillips
- C) Claim in the matter of Michael A. Fink
- D) Complaint in the matter of Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Public Employment Relations Board Case No. LA-CE-1607-M
- E) Complaint in the matter of Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Public Employment Relations Board Case No. LA-CE-1648-M
- F) Billy Howard, Plaintiff v. Kern County Lerdo Facility Medical Chief, et al, Defendant, United States District Court, Eastern District of California, Civil Action No. 1:21-cv-00931-JLT-CDB-(PC)
- G) Claim in the matter of Ricardo Montillano
- H) Christopher Harkins, Plaintiff, v. Kern County Hospital Authority, a municipal corporation; and DOES 1 through 50, inclusive, Defendants, KCSC Case No. BCV-23-102237 DRZ
- I) Notice of Filing Discrimination Complaint in the matter of Harmon Bagallon, Civil Rights Department Case No. 202303-19878507, EEOC No. 37A-2023-02251



## **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, August 16, 2023**

**11:30 A.M.**

#### **BOARD TO RECONVENED**

Board Members: Berjis, Bigler, McLaughlin, Pelz, Pollard, Zervis  
Roll Call: 4 Present; 2 Absent - McLaughlin, Pollard

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

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

#### **BOARD ACTION SHOWN IN CAPS**

NOTE: DIRECTOR POLLARD JOINED THE MEETING AFTER THE VOTE ON THE CONSENT AGENDA

#### **PUBLIC PRESENTATIONS**

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing the appointment of James L. Zervis, Kern County Chief Administrative Officer, to the Kern County Hospital Authority Board of Governors –  
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON RECOGNIZED THE APPOINTMENT OF DIRECTOR ZERVIS TO THE BOARD OF GOVERNORS; CHAIRMAN BIGLER AND DIRECTOR BERJIS WELCOMED DIRECTOR ZERVIS; DIRECTOR ZERVIS HEARD REGARDING HIS APPOINTMENT

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on July 19, 2023 –  
APPROVED  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 5) Proposed Agreement with Mohammed A. S. Molla, M.D., a contract employee, for professional medical and administrative services in the Department of Psychiatry from August 16, 2023 through August 15, 2028, in an amount not to exceed \$3,000,000, plus applicable benefits –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 100-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 6) Proposed Agreement with John B. Schlaerth, M.D., A Medical Corporation, an independent contractor, for professional medical services in the Department of Obstetrics and Gynecology from September 1, 2023 through August 31, 2025, in an amount not to exceed \$800,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 101-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 7) Proposed Personal/Professional Services Agreement with Aspen Street Architects, Inc., an independent contractor, for analysis and report in compliance with the non-structural evaluation required by Senate Bill 1953, Seismic and Compliance Safety Act and 2022 applicable law from August 16, 2023 through August 15, 2026, in an amount not to exceed \$550,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 102-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 8) Proposed Agreement with McMurtrey Lince, Inc., an independent contractor, for H/VAC replacement services, effective August 16, 2023, in an amount not to exceed \$350,384 – MADE A FINDING 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 103-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 9) Proposed Agreement with James E. Thompson, Inc., doing business at JTS Construction, an independent contractor, for construction services related to installation of two H/VAC units, effective August 16, 2023, in an amount not to exceed \$172,500 – MADE A FINDING 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 104-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 10) Proposed retroactive Personal/Professional Services Agreement with G.L. Bruno Construction, Inc., an independent contractor, for emergency H/VAC repair and maintenance services from July 21, 2023 through July 20, 2026, in an amount not to exceed \$450,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 105-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 11) Proposed retroactive Rental Contract with H&E Equipment Services, Inc., an independent contractor, containing nonstandard terms and conditions, for rental equipment for the Emergency Temporary Air Handler project, in an amount not to exceed \$1,871 – MADE A FINDING 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 106-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 12) Proposed Agreement with Teleflex, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of urology surgical supplies, effective August 16, 2023, in an amount not to exceed \$120,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 107-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 13) Proposed retroactive Amendment No. 1 to Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees, amending the Adoption Agreement with Voya Institutional Trust Company, an independent contractor, to permit recognition of service with other employers for vesting purposes only, effective July 1, 2023 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 108-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**



CA

- 14) Proposed Value Rental Supplement to Addendum to Agreement 078-2018 with UBEO West, LLC, an independent contractor, approved at the regular meeting on July 19, 2023 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 111-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY OF EQUIPMENT  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 15) Proposed Presidio Technology Capital Financing Application for State and Local Government in support of Master Lease Schedule 682210 with Presidio Technology Capital, LLC, an independent contractor, approved at the regular meeting on July 19, 2023 – APPROVED; ADOPTED RESOLUTION 2023-008; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 112-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FURTHER LEASE DOCUMENTS SUBJECT TO APPROVAL AS TO FORM BY COUNSEL  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 16) Proposed Price Change and Renewal Amendment to the Master Customer Agreement 16016 with Experian Health, Inc., an independent contractor, containing nonstandard terms and conditions, for the period September 14, 2016 through September 13, 2023, for revenue cycle support, extending the term for three years from September 14, 2023 through September 13, 2026, and increasing the maximum payable by \$285,840, from \$802,812 to \$1,088,652, to cover the term – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 113-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA

- 17) Proposed Agreement with Hamilton Medical, Inc., an independent contractor, for purchase of medical ventilators from August 16, 2023 through August 15, 2028, in an amount not to exceed \$1,000,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 114-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA)

- 18) Proposed retroactive Side Letter of Agreement to Memorandum of Understanding 042-2021 with Committee of Interns and Residents/Service Employees International Union 1957, for the period July 1, 2021 through June 30, 2024, to permit resident physicians to seek reimbursement from the Educational Fund to supplement the remaining 50% of the fee to cover the cost of USMLE Step 3 or COMLEX-USA licensing examination, effective July 1, 2022 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 115-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

CA)

- 19) Proposed retroactive Personal/Professional Services Agreement with McMurtrey Lince, Inc., an independent contractor, for general construction services and maintenance related to the CT scan trailer from May 1, 2023 through April 30, 2026, in an amount not to exceed \$450,000 – MADE A FINDING 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 116-2023  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

NOTE: CHIEF EXECUTIVE OFFICER SCOTT THYGERSON, CHIEF MEDICAL OFFICER GLENN GOLDIS, M.D., CHIEF OPERATING OFFICER TYLER WHITEZELL, CHIEF AMBULATORY AND OUTREACH OFFICER RENEE VILLANUEVA, CHIEF STRATEGY OFFICER NATALEE GARRETT, VICE PRESIDENT HUMAN RESOURCES LISA HOCKERSMITH, AND EXECUTIVE ASSISTANT AND AUTHORITY BOARD COORDINATOR MONA ALLEN LEFT THE ROOM PRIOR TO THE DISCUSSION ON AGENDA ITEM 20 AND DID NOT RETURN UNTIL AFTER THE DISCUSSION AND VOTE ON ITEM 20

- 20) Proposed Agreement with Meridian Healthcare Partners, Inc., an independent contractor, to terminate Agreement 012-2021 for healthcare consulting and executive management services including supervision and management of the day-to-day operations of Kern Medical Center, effective August 31, 2023, in an amount not to exceed \$850,000 – VICE PRESIDENT & GENERAL COUNSEL KAREN S. BARNES MADE PRESENTATION; CHAIRMAN BIGLER AND DIRECTOR POLLARD HEARD IN SUPPORT OF TERMINATING THE AGREEMENT WITH MERIDIAN HEALTHCARE PARTNERS, INC. AND THANKED MERIDIAN FOR ITS SERVICE AND THE TURNAROUND OF KERN MEDICAL CENTER; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 117-2023  
**Pollard-Berjis: 5 Ayes; 1 Absent - McLaughlin**
- 21) Kern County Hospital Authority Chief Financial Officer report – CHIEF FINANCIAL OFFICER ANDREW CANTU MADE PRESENTATION; DIRECTOR PELZ HEARD REGARDING DECREASE OF DAYS IN ACCOUNTS RECEIVABLE; DIRECTOR ZERVIS HEARD REGARDING LEVEL OF INDIGENT FUNDING; RECEIVED AND FILED  
**Pelz-Pollard: 5 Ayes; 1 Absent - McLaughlin**
- 22) Kern County Hospital Authority Chief Executive Officer report – CHIEF EXECUTIVE OFFICER SCOTT THYGERSON MADE PRESENTATION; RECEIVED AND FILED  
**Berjis-Pelz: 5 Ayes; 1 Absent - McLaughlin**
- CA  
23) Monthly report on What's Happening at Kern Medical Center – RECEIVED AND FILED  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**
- CA  
24) Miscellaneous Correspondence – RECEIVED AND FILED  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**
- CA  
25) Claims and Lawsuits Filed as of July 31, 2023 – RECEIVED AND FILED  
**Pelz-Berjis: 4 Ayes; 2 Absent - McLaughlin, Pollard**

ADJOURNED TO CLOSED SESSION  
**Berjis-Pollard**

CLOSED SESSION

- 26) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 27) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – SEE RESULTS BELOW
- 28) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – SEE RESULTS BELOW
- 29) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – SEE RESULTS BELOW
- 30) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Unrepresented Employees (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

**Pollard-Zervis**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item 26 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 BERJIS, SECOND BY DIRECTOR POLLARD); 1 ABSENT - DIRECTOR MCLAUGHLIN), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, REQUEST FOR REVISION OF PRIVILEGES, CHANGE IN STAFF STATUS, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

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

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

Item 29 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item 30 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Unrepresented Employees (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

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

**Zervis**

/s/ Mona A. Allen  
Authority Board Coordinator

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



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

September 20, 2023

**Subject:** Proposed appointment of Ralph Garcia-Pacheco Suarez, M.D., as Chair Department of Medicine

**Requested Action:** Ratify appointment

**Summary:**

Kern Medical is requesting that your Board ratify the appointment of Ralph Garcia-Pacheco, M.D., as Chair Department of Medicine, effective September 20, 2023. Dr. Garcia-Pacheco has been employed by Kern Medical since June 1, 2015, and serves as the Chief, Division of Pulmonary and Critical Care Medicine.

The Medicine Department has been without a full-time Chair since March 2023. Dr. Garcia-Pacheco, who is board certified in general medicine with subspecialty certifications in pulmonary disease and critical care medicine, was appointed the Acting Chair effective March 13, 2023. Since that time, he has performed the responsibilities and duties required of a department chair in exemplary fashion and in accordance with the Medical Staff Bylaws (Bylaws).

The process for appointing a department chair is set forth in the Bylaws, which includes the formation of a search committee to seek applicants to fill the position. After conducting a search for the most desirable candidate, the search committee, comprised of the Chief Executive Officer, Chief Medical Officer, and members of the Medical Staff, has recommended to Mr. Thygerson that Dr. Garcia-Pacheco be appointed the Chair of the Department. Mr. Thygerson concurs with the recommendation. The Bylaws require that your Board ratify the final decision.

Therefore, it is recommended that your Board ratify the appointment of Ralph Garcia-Pacheco, M.D., as Chair, Department of Medicine, effective September 20, 2023.



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

September 20, 2023

**Subject:** Kern County Hospital Authority Organizational Chart effective September 20, 2023

**Recommended Action:** Approve

**Summary:**

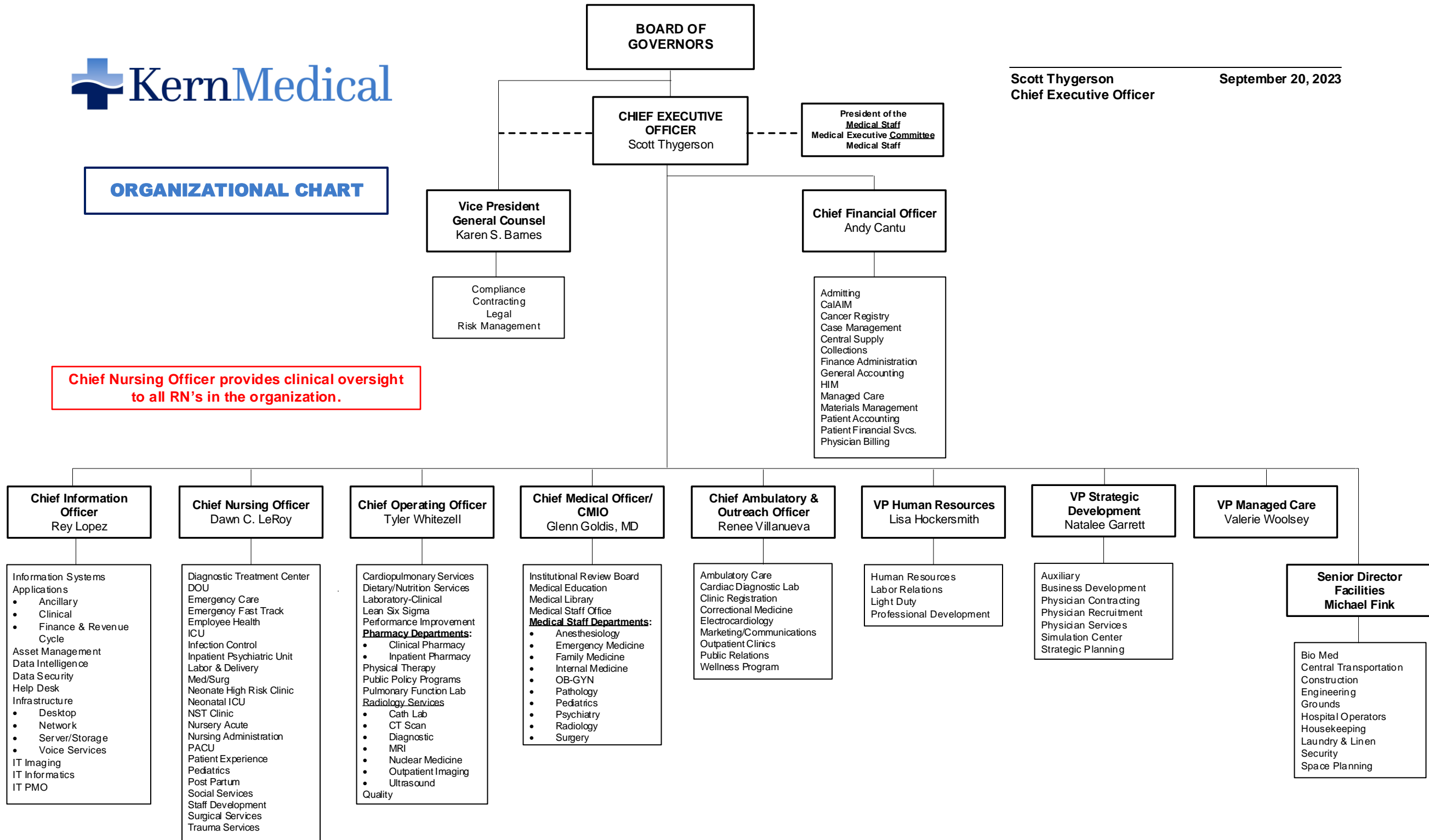
Kern Medical requests your Board approve the Kern County Hospital Authority Organizational Chart effective September 20, 2023.



## ORGANIZATIONAL CHART

Scott Thygerson  
Chief Executive Officer

September 20, 2023





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

September 20, 2023

**Subject:** Proposed Agreement for Professional Services with Prime Actuarial Consulting, LLC, doing business as Bickmore Actuarial for analysis of self-insurance program.

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

**Summary:**

Kern Medical requests that your Board approve the proposed Agreement for Professional Services with Prime Actuarial Consulting, LLC doing business as Bickmore Actuarial (Bickmore) for continued actuarial services in evaluating the self-insured liabilities of both the workers compensation and professional liabilities (medical malpractice) programs.

Bickmore has provided Kern County Hospital Authority (KCHA) with annual actuarial services regarding the liabilities of the above-referenced programs since 2017. The services provided by Bickmore allow KCHA to recognize and budget accordingly for the liabilities associated with existing and prospective claims arising from known and unknown liabilities and are required as part of the annual financial audit prepared by Moss Adams. Additionally, an actuarial analysis is required annually by the Department of Industrial Relations, Office of Self-Insurance Plans to ensure financial solvency and continued approval to self-insure workers compensation risks.

The Agreement is for five (5) years, effective October 1, 2023, and with a maximum payable of \$55,000 to cover the term.

Therefore, it is recommended that your Board approve the proposed Agreement for Professional Services with Prime Actuarial Consulting, LLC, doing business as Bickmore Actuarial, for a term of five (5) years beginning October 1, 2023 through September 30, 2028, with a maximum payable of \$55,000, and authorize the Chairman to sign.



**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR**

**(Kern County Hospital Authority – Prime Actuarial Consulting LLC, dba Bickmore Actuarial)**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, between the Kern County Hospital Authority, a local unit of government (“KCHA”), which owns and operates Kern Medical Center (“KMC”), and Prime Actuarial Consulting LLC doing business as Bickmore Actuarial (“Contractor”), with its principal place of business located at 180 Promenade Circle, Suite 300, Sacramento, CA 95834.

**I.  
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) KCHA requires the assistance of Contractor to provide a professional actuarial analysis of the self-insured excess medical malpractice program and the self-insured excess workers compensation programs, as such services are unavailable from KCHA resources; and

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

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall commence October 1, 2023 (the “Effective Date”), and shall end September 30, 2028, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

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

2.2 **Representations.** 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 KCHA nor does Contractor represent a person or firm with an interest adverse to KCHA 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. KCHA 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 KCHA 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 KCHA determines that any of Contractor's work is not in accordance with such level of competency and standard of care, KCHA, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with KCHA to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of section 35; or (d) 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 KCHA, 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 KCHA.

2.6 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 KCHA 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 KCHA is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish KCHA with proof of payment of taxes on these earnings.

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

### 3. Obligations of KCHA.

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

3.2 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 **Fees and Charges.** As consideration for the services provided by Contractor hereunder, KCHA will pay Contractor in accordance with the fee schedule set forth in Exhibit "A," attached hereto and incorporated herein by this reference. All services are payable in arrears.

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

4.3 **Maximum Payable.** The maximum payable under this Agreement will not exceed \$55,000 over the five (5) year term of this Agreement.

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.

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

6. **Assignment.** 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 KCHA.

7. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to KCHA accurate books and records relative to all its activities under this Agreement. Contractor shall permit KCHA to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this 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 KCHA herein.

8. **Authority to Bind KCHA.** It is understood that Contractor, in its performance of any and all duties under this Agreement, has no authority to bind KCHA to any agreements or undertakings.

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

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

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

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

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

14. **Confidentiality.**

14.1 **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.

14.2 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.

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

14.4 Protected Health Information. Contractor and KCHA recognize that in performing services, Contractor may receive, create or otherwise have access to protected health information ("PHI") and thereby become a business associate of KCHA or KMC (as defined by the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 160 and Part 164). Accordingly, the parties shall protect PHI in accordance with the HIPAA Business Associate Addendum, attached as Exhibit "D" and incorporated herein by this reference. In the event of a conflict between Exhibit "D" and any other confidentiality provision of this Agreement, Exhibit "D" shall control.

14.5 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 Contractor's assigned personnel during and in connection with this Agreement shall remain the property of KCHA at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to KCHA all such Documents, which have not already been provided to KCHA in such form or format as KCHA deems appropriate. Such Documents shall be and will remain the property of KCHA 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 KCHA. KCHA further recognizes and agrees that in delivering the Documents under this Agreement, the Contractor may create new proprietary tools and analytics and that any such new proprietary tools and analytics are not included in the ownership of the Documents that belong to KCHA.

15. 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, KCHA may immediately terminate this Agreement by giving written notice thereof.

16. 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.

17. 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 KCHA 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 KCHA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

18. **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.

19. **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.

20. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to KCHA 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.

21. **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, if requested by KCHA. Without limiting the generality of the indemnification in section 21, Contractor agrees to indemnify, defend, and hold harmless KCHA, 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. **Indemnification and Hold Harmless.** Contractor agrees to indemnify, defend and hold harmless KCHA and KCHA’s agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys’ fees of KCHA Counsel and counsel retained by KCHA, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any negligent act or omission of Contractor or Contractor’s officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of

KCHA; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.

23. **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 KCHA. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to KCHA 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.

24. **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 "C," attached hereto and incorporated herein by this reference.

25. **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.

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

27. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to KCHA 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 KCHA and Contractor that any such person or entity, other than KCHA or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

28. **Non-Appropriation.** KCHA 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, KCHA 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 KCHA requires such an action.

29. **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 KCHA. Contractor has received from KCHA no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

30. **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.

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

32. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of KCHA. Forbearance or indulgence by KCHA in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Contractor. KCHA shall be entitled to invoke any remedy available to KCHA 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:	Prime Actuarial LLC, dba Bickmore Actuarial 180 Promenade Circle, Ste 300 Sacramento, CA 95834 Attn: Mike Harrington, Senior Vice President
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Notice to KCHA:	Kern Medical Center 1700 Mount Vernon Avenue Bakersfield, California 93306 Attn.: Chief Executive Officer
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34. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

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

36. **Termination.**

36.1 **Termination with Cause.** Either party may terminate this Agreement in the event of a material breach by the other; provided, however, the termination for the breach of this Agreement will not become effective unless and until the party not in default, has given the other party written notice of



breach, which notice shall state the general nature of the breach, and the party allegedly in default will thereafter have a period of 30 days following the giving of said notice in which to remedy the default to the reasonable satisfaction of the other party. If the alleged default is of the kind that cannot be cured within 30 days, then the party allegedly in default will have an additional 30 days in which to remedy the breach as long as such party is acting in good faith and using diligent efforts to remedy such breach throughout the cure period.

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

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

### 37. Effect of Termination.

37.1 Payment Obligations. In the event of termination of this Agreement for any reason, KCHA 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. KCHA 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 KCHA to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between KCHA and any provider that may replace Contractor.

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.

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

KERN COUNTY HOSPITAL AUTHORITY

BICKMORE

By \_\_\_\_\_

Russell Bigler  
Chairman, Board of Governors

By \_\_\_\_\_

Mike Harrington, FCAS MAAA  
President, Actuarial Consulting

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By \_\_\_\_\_

Karen S. Barnes  
Vice President & General Counsel

APPROVED AS TO FORM:  
Legal Services Department

By \_\_\_\_\_

Hospital Counsel  
Kern County Hospital Authority

# EXHIBIT A



Tuesday, June 13, 2023

Mr. Steven Chandler  
Kern County Hospital Authority  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306  
Sent Via Email: Steven.Chandler@kernmedical.com

RE: Actuarial Services Engagement Letter – 2023 Analysis

Dear Mr. Chandler

Thank you for the opportunity to provide actuarial services to Kern County Hospital Authority (the Authority). The Authority is seeking professional actuarial advice with regard to its self-insured professional liability and workers' compensation programs. The following is a brief outline of our understanding of the scope of work to be performed and our fees.

The objective of these studies is to provide an estimate of outstanding liabilities, projection of loss costs, cash flow and investment income. Each of our reports will include the following information:

- Calculate program funding levels for the 2023-24 and 2024-25 program years at the expected level, as well as at various confidence levels.
- Determine appropriate rates for claims incurred during the 2023-24 and 2024-25 program years at the expected level, as well as at various confidence levels.
- Estimate required funding for the program's outstanding losses and loss adjustment expenses for all preceding fiscal years as of June 30, 2023. The outstanding losses and loss adjustment expenses are to be stated at the expected level, as well as at various confidence levels.
- Provide each of the estimates specified above on both discounted and full value bases.
- Analysis will be performed using data valued as of June 30, 2023.
- Provide a statement of compliance with GASB 10 and 30.
- Estimate the program's cash flow requirements for a given number of fiscal years, separately identified for each accident year.
- If requested, allocate required funding for the 2023-24 and 2024-25 program years to the Authority excluding LLC, and to Ambulatory Surgery Center LLC.

We will agree to complete the scope of work discussed above for the following fees:

<b><u>Project Component</u></b>	<b><u>2023-24</u></b>	<b><u>2024-25</u></b>	<b><u>2025-26</u></b>	<b><u>2026-27</u></b>	<b><u>2027-28</u></b>
WC Actuarial Study	\$4,000	\$4,140	\$4,280	\$4,420	\$4,560
PL Actuarial Study	4,000	4,140	4,280	4,420	4,560
WC Allocation Study	1,135	1,170	1,205	1,240	1,275
<u>PL Allocation Study</u>	<u>1,135</u>	<u>1,170</u>	<u>1,205</u>	<u>1,240</u>	<u>1,275</u>
<b>Total</b>	<b>\$10,270</b>	<b>\$10,620</b>	<b>\$10,970</b>	<b>\$11,320</b>	<b>\$11,670</b>

We will agree to one personal visit as part of the fees outlined above. Should other services beyond the scope of work outlined above be required, we will bill for our time and out of pocket expenses at the rates specified below.

<b><u>Consultant</u></b>	<b><u>Hourly Rate</u></b>
President	\$325
Director	300
Manager	250
Actuarial Staff	150
Administrative Staff	75

Upon delivery of a draft report, consultant shall be entitled to the entire fee. If this agreement is terminated prior to delivery of a draft report, client agrees to pay contractor for all hours incurred through the date notice of termination is given. Such amount shall be limited to the maximum fees stated in this agreement.

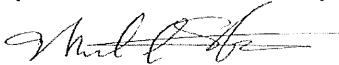
Our target delivery date for the draft reports will be within four weeks of receipt of complete data.

Please call me at (916) 244-1162 with any questions you may have with regard to our proposal.

Respectfully Submitted,

Mike Harrington

Accepted By:  
**Prime Actuarial Consulting LLC**  
**(dba Bickmore Actuarial)**



Mike Harrington, FCAS, MAAA  
President, Actuarial Consulting

Accepted By:  
**Kern County Hospital Authority**

Russell Bigler  
Chairman, Board of Governors

**EXHIBIT “B”**

**IRS FORM W-9**

**EXHIBIT “C”**  
**Insurance**

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by 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 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 KCHA 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, KCHA 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 KCHA. Contractor is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Contractor 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 Contractor 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 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) KCHA 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 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 Contractor's profession.
- (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate. If Contractor maintains higher limits than the specified minimum limits, KCHA requires and shall be entitled to coverage for the higher limits maintained by Contractor.

- (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. Contractor is responsible for any deductible or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Contractor 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, Contractor 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. Contractor 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) 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 KCHA within 30 days.



9. Policy Obligations: Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
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 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 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. KCHA, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Contractor, KCHA may deduct from sums due to Contractor 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 “D”  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and Prime Actuarial Consulting LLC, dba Bickmore Actuarial (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of the effective date of the Underlying Agreement (the “**Effective Date**”).

**RECITALS**

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

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

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

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

**AGREEMENT**

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

**ARTICLE I  
DEFINITIONS**

1.1 “**Breach**” shall have the meaning given under 45 C.F.R. § 164.402.

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

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

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

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

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

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

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

Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

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

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

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

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

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

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

### **ARTICLE III OBLIGATIONS OF COVERED ENTITY**

### 3.1 Covered Entity's Obligations.

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

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

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

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

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

## **ARTICLE IV TERM AND TERMINATION**

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

### 4.2 Termination of Underlying Agreement.

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

## **ARTICLE V MISCELLANEOUS**

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

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

5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control.



Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

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

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

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

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

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

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

may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

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

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

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Prime Actuarial Consulting LLC, dba  
Bickmore Actuarial  
180 Promenade Circle, Ste 300  
Sacramento, CA 95834  
Attn: Mike Harrington, President

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

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

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

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

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

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

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

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

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



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

September 20, 2023

**Subject:** Proposed Master Agreement No. 11310194302 with Flex Financial, a division of Stryker Sales, LLC, for the purchase of five (5) replacement drills, towers, and platforms for the surgical suites

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

**Summary:**

Kern Medical requests that your Board approve the proposed Master Agreement with Flex Financial, a division of Stryker Sales, LLC, for the purchase of five (5) replacement drills, towers and platforms, that are reaching end of life. The term of this agreement is for twenty-two (22) months and would cost approximately \$2,023,299 (\$1,723,256 plus tax and fees) for the term of the Agreement. The agreement would be paid for in eight (8) quarterly payments of \$252,912.33 beginning on September 20, 2023.

This agreement supports Kern Medical's efforts to anticipate and provide necessary and updated equipment and supplies to our surgeons for endoscopy and orthopedic cases.

Counsel is unable to approve as to form due to non-standard terms which include: limited liability of the vendor, waiver of a jury trial, requirements that the Authority indemnify and defend that vendor, among others. Efforts were made to negotiate with the vendor to no avail.

Even with the non-standard terms, this purchase would vastly improve patient services in endoscopy and orthopedic surgery cases and improve patient satisfaction, therefore, it is recommended that your Board approve the proposed Master Agreement with Flex Financial, a division of Stryker Sales, LLC, effective September 20, 2023 through July 19, 2025, with a maximum not to exceed of \$2,023,299, and authorize the Chairman to sign.

Flex Financial, a division of Stryker Sales, LLC  
1901 Romence Road Parkway  
Portage, MI 49002  
t: 1-888-308-3146 f: 877-204-1332



Date: August 11, 2023

RE: Reference no:11310194302

KERN COUNTY HOSPITAL AUTHORITY  
1700 MOUNT VERNON AVE  
BAKERSFIELD, California 93306

Thank you for choosing Stryker for your equipment needs. Enclosed please find the documents necessary to enter into the arrangement. Once all of the documents are completed, properly executed and returned to us, we will issue an order for the equipment.

PLEASE COMPLETE ALL ENCLOSED DOCUMENTS TO EXPEDITE THE SHIPMENT OF YOUR ORDER.

Master Agreement  
Lease Schedule to Master Agreement  
Exhibit A - Detail of Equipment  
Insurance Authorization and Verification  
State and Local Government Rider  
Opinion of Counsel  
Addendum

\*\*Conditions of Approval: Insurance Authorization and Verification, State and Local Government Rider, Federal ID, Opinion of Counsel

PLEASE PROVIDE THE FOLLOWING WITH THE COMPLETED DOCUMENTS:

Federal tax ID number:	_____	AP address:	_____
Purchase order number:	_____		
Upfront Payment Check No:	_____	Contact name:	_____
Phone number:	_____	Email address:	_____

Please fax completed documents to (877) 204-1332. Return original documents to 1901 Romence Road Parkway Portage, MI 49002 (using Fed-Ex Shipping ID# 772-432976)

Your personal documentation specialist is Michelle Warren and can be reached at 269-389-1909 or by email [michelle.warren@stryker.com](mailto:michelle.warren@stryker.com) for any questions regarding these documents.

The proposal evidenced by these documents is valid through the last business day of August, 2023.

Sincerely,

Flex Financial, a division of Stryker Sales, LLC

Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (Individuals or businesses) who opens an account. What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents. For your records, the federal employer identification number for Flex Financial, a Division of Stryker Sales, LLC is 38-2902424.

# MASTER AGREEMENT No.11310194302



<b>Owner:</b> Flex Financial, a division of Stryker Sales, LLC 1901 Romence Road Parkway Portage, MI 49002	<b>Customer:</b> KERN COUNTY HOSPITAL AUTHORITY 1700 MOUNT VERNON AVE BAKERSFIELD, California 93306
<p><b>1. Master agreement.</b> The undersigned Customer ("Customer") unconditionally and irrevocably agrees with the above referenced Owner (together with all of its successors and Assignees, collectively, "Owner") to use or acquire, as applicable, the equipment and other personal property and services, if any (together with all additions and attachments to it and all substitutions for it, collectively, the "Equipment") described in each Equipment Schedule referencing this Agreement (which may be in the form of an Equipment Lease Schedule, Equipment Rental Schedule, Equipment Use Schedule, Fee Per Disposable Schedule, Fee Per Implant Schedule, Equipment Purchase Schedule or other schedule referencing this Agreement, each, together with any attachments thereto, an "Equipment Schedule") and purchased from the Supplier(s) noted in the applicable Equipment Schedule (each a "Supplier"). Each Equipment Schedule shall incorporate by reference all of the terms of this Agreement and shall constitute a separate agreement (each such Equipment Schedule, together with such incorporated terms of this Agreement, collectively, a "Schedule") that is assignable separately from each other Schedule. In the event of a conflict between this Agreement and the terms of an Equipment Schedule, the terms of the Equipment Schedule shall prevail. No provision of a Schedule may be amended except in a writing signed by Owner's and Customer's duly authorized representatives.</p>	
<p><b>2. Risk of loss.</b> Effective upon delivery to Customer and continuing until the Equipment is returned to Owner in accordance with the terms of each Schedule, Customer shall bear all risks of loss or damage to the Equipment and if any loss occurs Customer is nevertheless required to satisfy all of its obligations under each Schedule.</p>	
<p><b>3. Payments/fees.</b> All periodic payments, "Semi-Annual Differential" (if a Fee Per Disposable Schedule or Fee Per Implant Schedule) and other amounts due from Customer to Owner under a Schedule are collectively referred to as "Payments". Unless otherwise instructed by Owner in writing, all Payments shall be made to Owner's address in the applicable Schedule. Any payment by or on behalf of Customer that purports to be payment in full for any obligation under any Schedule may only be made after Owner's prior written agreement to accept such payment amount. If Customer fails to pay any amount due under a Schedule within ten (10) days after its due date, Customer agrees to pay a late charge equal to (as reasonable liquidated damages and not as a penalty) five percent (5%) of the amount of each such late payment. If any check or funds transfer request for any Payment is returned to Owner unpaid, Customer shall pay Owner a service charge of \$55 for each such returned check or request. Customer authorizes Owner to adjust the Payments at any time if taxes included in the Payments differ from Owner's estimate. Customer agrees that the Payments under a Schedule were calculated by Owner based, in part, on an interest rate equivalent as quoted on Bloomberg under the SOFR Swap Rate, that would have a repayment term equivalent to the initial term (or an interpolated rate if a like-term is not available) as reasonable determined by us (and if the SOFR Swap Rate is no longer provided by Bloomberg, such rate shall be determined in good faith by Owner from such sources as Owner shall determine to be comparable to Bloomberg (or any successor)), and in the event the date the Equipment is delivered to Customer under any Schedule is more than 30 days after Owner sends the Schedule to Customer, Owner may adjust the Payments once to compensate Owner, in good faith, for any increase in such rate. "SOFR" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's website as quoted by Bloomberg.</p>	
<p><b>4. Equipment.</b> Customer shall keep the Equipment free of liens, claims and encumbrances, and shall not modify, move, sell, transfer, or otherwise encumber any Equipment or permit any Equipment to be used by others or become attached to any realty, in each case without the prior written consent of Owner, which consent shall not be unreasonably withheld. Any modification or addition to any Equipment shall automatically become the sole property of Owner, unless the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule. Owner shall have the right to enter Customer's premises during business hours to inspect any Equipment and observe its use upon at least one (1) day's prior written or verbal notice. Customer shall comply with all applicable laws, rules and regulations concerning the operation, ownership, use and/or possession of the Equipment.</p>	
<p><b>5. Obligations absolute.</b> Customer's Payments and other obligations under each Schedule are absolute and unconditional and non-cancelable regardless of any defect or damage to the Equipment (or Disposables/Implants, if applicable) or loss of possession, use or destruction of the Equipment (or Disposables/Implants, if applicable) and are not subject to any set-offs, recoupment, claims, abatements or defenses, <u>provided that</u> neither this Agreement nor any Equipment Schedule shall impair any express warranties or indemnifications, written service agreements or other obligations of Stryker Corporation or any of its subsidiaries to Customer regarding the Equipment and Owner hereby assigns all of its rights in any <u>Equipment warranties to Customer</u>. Customer waives all rights to any indirect, punitive, special or consequential damages in connection with the Equipment or any Schedule.</p>	
<p><b>6. Use/assignment/disclaimers.</b> All Equipment shall be used solely for business purposes, and not for personal or household use. Customer shall maintain the Equipment in good repair in accordance with the instructions of the Supplier so that it shall be able to operate in accordance with the manufacturer's specifications. <b>CUSTOMER SHALL NOT TRANSFER OR ASSIGN ANY OF ITS RIGHTS OR OBLIGATIONS UNDER ANY SCHEDULE OR EQUIPMENT</b> without Owner's prior written consent, which consent shall not be unreasonably withheld. Customer shall promptly notify Owner in writing of any loss or damage to any Equipment. Owner shall own the Equipment (unless the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule). Owner may sell, assign, transfer or grant a security interest to any third party (each, an "Assignee") in any Equipment, Payments and/or Schedule, or interest therein, in whole or in part, without notice to or consent by Customer. Customer agrees that Owner may assign its rights under and/or interest in each Schedule and the related Equipment to an Assignee immediately upon or any time after Owner's acceptance of each Schedule and upon such assignment, Customer consents to such assignment and acknowledges that references herein to "Owner" shall mean the Assignee. No Assignee shall assume or be liable for any of the Original Owner's (as defined below) obligations to Customer even though an Assignee may continue to bill and collect all of Customer's obligations under this Agreement in the name of "Flex Financial, a division of Stryker Sales, LLC." Customer acknowledges that such Assignee is not the manufacturer or supplier of any Equipment and is not responsible for its delivery, installation, repair, maintenance or servicing and no Assignee shall have any obligations or liabilities of any kind whatsoever concerning or relating to the Equipment. Customer has selected each Supplier and manufacturer and all of the Equipment. Neither the Original Owner, Supplier nor any manufacturer is an agent of any Assignee, and no representative of the Original Owner, manufacturer or any Supplier is authorized to bind any Assignee for any purpose or make any representation on Assignee's behalf. Customer agrees to look only to Stryker Sales, LLC (the "Original Owner"), the Supplier(s) or the manufacturer(s) for any defect or breach of warranty regarding the Equipment. <b>AS TO ANY ASSIGNEE, CUSTOMER TAKES AND USES THE EQUIPMENT ON AN "AS-IS", "WHERE-IS" BASIS. ASSIGNEE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, REGARDING ANY EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT, IF ANY, THAT CUSTOMER HAS ANY CLAIMS, RIGHTS OR DEFENSES AGAINST THE ORIGINAL OWNER, ANY MANUFACTURER AND/OR ANY SUPPLIER, CUSTOMER SHALL RAISE SUCH CLAIMS, RIGHTS OR DEFENSES ONLY AGAINST THE ORIGINAL OWNER, MANUFACTURER OR SUPPLIER AND NOT AGAINST ASSIGNEE AND SHALL NONE-THE-LESS PAY ALL PAYMENTS AND OTHER AMOUNTS DUE UNDER A SCHEDULE TO THE ASSIGNEE ON THEIR RESPECTIVE DUE DATES WITHOUT ANY DEFENSE, RECOUPMENT, SETOFF, ABATEMENT, CLAIM OR COUNTERCLAIM OF ANY NATURE. THE ORIGINAL OWNER (INCLUDING FLEX FINANCIAL, A DIVISION OF STRYKER SALES, LLC) MAKES NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY EQUIPMENT.</b></p>	

**7. Insurance/Indemnification.** Customer shall at all times maintain and provide Owner with certificates of insurance evidencing (i) third-party general liability insurance (covering death and personal injury and damage to third party property) with a minimum limit of \$1 million combined single limit per occurrence and (ii) property insurance covering the Equipment against fire, theft, and other loss, damage or casualty for the full replacement value of the Equipment in each case with insurers acceptable to Owner. Such policies shall list Owner and each Assignee as an additional insured and sole loss payee, as applicable, for such insurance. Such insurance policies shall require the insurer to provide Owner with at least 30 days' prior written notice of any material change in or cancellation of the insurance. In the event that Owner determines that the insurance is not in effect, Owner may (but shall not be required to) obtain such insurance and add an insurance fee (which may include a profit) to the amounts due from Customer under the applicable Schedule. Upon any loss or damage to any Equipment Customer shall continue to pay all Payments due under the related Schedule for the remainder of its term and shall, at Owner's sole election, either repair such Equipment or replace it with comparable equipment satisfactory to Owner. Proceeds of insurance shall be paid to Owner with respect to any Equipment loss damage, theft or other casualty and shall, at the election of Owner, be applied either to the repair of the Equipment by payment by Owner directly to the party completing the repairs, or to the reimbursement of Customer for the cost of such repairs; provided, however, that Owner shall have no obligation to make such payment or any part thereof until receipt of such evidence as Owner shall deem satisfactory that such repairs have been completed and further provided that Owner may apply such proceeds to the payment of any Payments or other sum due or to become due hereunder if at the time such proceeds are received by Owner there shall have occurred any Event of Default or any event which with lapse of time or notice, or both, would become an Event of Default. To the extent not expressly prohibited by applicable law, Customer will reimburse and defend Owner, including each Assignee for and against any losses, injuries, damages, liabilities, expenses, claims or legal proceedings asserted against or incurred by Owner, including any Assignee, relating to the Equipment and which relate to or arise out of Customer's act or omission or the act or omission of Customer's agents or employees or others (excluding Owner) with access to the Equipment. All Taxes and Indemnity obligations shall survive the termination, cancellation or expiration of a Schedule.

**8. UCC filings.** CUSTOMER WAIVES ANY AND ALL RIGHTS AND REMEDIES GRANTED TO CUSTOMER BY SECTIONS 2A-508 THROUGH 2A-522 OF THE UNIFORM COMMERCIAL CODE ("UCC"). If and to the extent that this Agreement or a Schedule is deemed a security agreement (or if the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule), Customer hereby grants to Owner, its successors and assigns, a security interest in all of Customer's rights under and interest in the Equipment, all additions to the Equipment and all proceeds of the foregoing. Such security interest secures all Payments and other obligations owing by Customer to Owner under the applicable Schedule. Customer authorizes Owner and any Assignee to file UCC financing statements disclosing Owner's or Assignee's interest in the Equipment. Customer shall provide Owner with at least 45 days' prior written notice of any change to Customer's principal place of business, organization or incorporation.

**9. Taxes.**

(a) Reporting and Payment. If permitted by applicable law and except as noted below, Owner shall pay when and as due all sales, use, property, excise and other taxes, and all license and registration fees now or hereafter imposed by any governmental body or agency upon any Schedule or the ownership, use, possession or sale of the Equipment, together with all interest and penalties for their late payment or non-payment ("Taxes"). Customer shall indemnify and hold Owner harmless from any such Taxes. Owner shall prepare and file all tax returns relating to Taxes for which Owner is responsible hereunder or which Owner is permitted to file under the laws of the applicable taxing jurisdiction. Except with respect to Equipment subject to an Equipment Purchase Schedule or \$1.00 Buyout, Customer will not list any of the Equipment for property tax purposes or report any property tax assessed against the Equipment. Upon receipt of any tax bill pertaining to the Equipment from the appropriate taxing authority, Owner will pay such tax and will invoice Customer for the expense. Upon receipt of such invoice, Customer will promptly reimburse Owner for such expense. If the Equipment is subject to an Equipment Purchase Schedule or \$1.00 Buyout, Customer shall report and pay all applicable property taxes on such Equipment. Nothing in this Subsection shall be deemed to prohibit Customer from reporting, for informational purposes only and to the extent required under applicable law, that it uses the Equipment.

(b) Tax Ownership.

(i) If Customer selects \$1.00 Buyout for any Schedule, the parties intend that Customer shall be considered the owner of the Equipment for tax purposes provided, however, that Owner shall not be deemed to have violated this Agreement or any Schedule by taking a tax position inconsistent with the foregoing to the extent such a position is required by law or is taken through inadvertence so long as such inadvertent tax position is reversed by Owner promptly upon its discovery.

(ii) If Customer selects the Fair Market Value Option or the Fixed Purchase Option for any Schedule, the parties intend that the Schedule will not be a "conditional sale", and that Owner shall at all times and for all purposes be considered the owner of the Equipment (including for income taxes purposes), and that such Schedule will convey to Customer no right, title or interest in any of the Equipment excepts the right to use the Equipment as described in the Schedule. Customer will not take any actions or positions inconsistent with treating Owner as the owner of the Equipment on or with respect to any income tax return.

Should either the United States government (or agency thereof) or any state or local tax authority disallow, eliminate, reduce, recapture, or disqualify, in whole or in part, the Equipment tax benefits claimed under a Schedule by Owner as a result of any act or omission of Customer (collectively, "Tax Loss"), to the extent not prohibited by applicable law, Customer will indemnify Owner (on a net after tax basis) against all Tax Losses suffered, including the amount of any interest or penalties which might be assessed on Owner by the governmental authority(ies) with respect to such Tax Loss. All references to Owner in this Section include Owner and the consolidated taxpayer group of which Owner is a member. All of Owner's (including any Assignee's) rights, privileges and indemnities contained in this Section shall survive the expiration or other termination of this Agreement. The rights, privileges and indemnities contained herein are expressly made for the benefit of, and shall be enforceable by Owner (including any Assignee), or its respective successors and assigns.

**10. Facsimile copies.** Owner may from time to time, in its sole discretion, accept a photocopy or facsimile of this Agreement and/or any Schedule (bearing a photocopied or electronically transmitted copy of Customer's signature) as the binding and effective record of such agreement(s) whether or not an ink signed counterpart thereof is also received by Owner from Customer, provided, however, that no Schedule shall be binding on Owner unless and until executed by Owner. Any such photocopy or electronically transmitted facsimile received by Owner shall when executed by Owner, constitute an original document for the purposes of establishing the provisions thereof and shall be legally admissible under the "best evidence rule" and binding on Customer as if Customer's manual ink signature was personally delivered.

**11. Notices.** All notices required or provided for in any Schedule, shall be in writing and shall be addressed to Customer or Owner, as the case may be, at its address set forth above or such other address as either such party may later designate in writing to the other party. Such notice shall be considered delivered and effective: (a) upon receipt, if delivered by hand or overnight courier, or (b) three (3) days after deposit with the U.S. Postal Service, if sent certified mail, return receipt requested with postage prepaid. No other means of delivery of notices shall be permitted.



**12. Default; remedies.** Customer will be in "default" under a Schedule, if any one or more of the following shall occur: (a) Customer or any Guarantor of any Schedule ("Guarantor") fails to pay Owner any Payment due under any Schedule within ten (10) days after it is due, or (b) Customer or any such Guarantor breaches any other term of any Schedule, or (c) Customer or any such Guarantor makes any misrepresentation to Owner, or (d) Customer or any such Guarantor fails to pay any other material obligation owed to Owner, any of Owner's affiliates, or any other party, or (e) Customer or any such Guarantor shall consent to the appointment of a receiver, trustee or liquidator of itself or a substantial part of its assets, or (f) there shall be filed by or against Customer or any such Guarantor a petition in bankruptcy, or (g) Customer's articles of incorporation or other formation documents shall be amended to change Customer's name and Customer fails to give Owner written notice of such change (including a copy of any such amendment) on or before the date such amendment becomes effective, or (h) Customer's legal existence in its state of incorporation or formation shall have lapsed or terminated, or (i) Customer shall dissolve, sell, transfer or otherwise dispose of all or substantially all of its assets, without Owner's prior written consent, which consent shall not be unreasonably withheld, or (j) without prior written consent of Owner, which consent shall not be unreasonably withheld, Customer merges or consolidates with any other entity and Customer is not the survivor of such merger or consolidation. Upon default, Owner may do any one or more of the following: (1) recover from Customer the sum of (A) any and all Payments, late charges and other amounts then due and owing under any or all Schedules, (B) accelerate and collect the unpaid balance of the remaining Payments scheduled to be paid under any or all Schedules, together with Owner's anticipated residual interest in any or all Equipment subject to them, both discounted to present value at a rate of 3% per annum, and (C) Owner's related reasonable attorneys' fees, collection costs and expenses; (2) enter upon Customer's premises and take possession of any or all of such Equipment; (3) terminate any or all Schedules; and/or (4) utilize any other right or remedy provided by applicable law. Customer shall also pay to Owner interest on all unpaid amounts due under a Schedule from the due date of such amounts until paid in full, at a rate per annum equal to the lower of 1-1/2% per month or the highest rate of interest permitted by applicable law (the "Default Interest Rate"). In the event the Equipment is returned or repossessed by Owner, Owner will, if commercially reasonable, sell or otherwise dispose of the Equipment, with notice as required by law, and apply the net proceeds after deducting the costs and expenses of such sale or other disposition, to Customer's obligations hereunder with Customer remaining liable for any deficiency and with any excess being retained by Owner or applied as required by law. If Customer fails to perform or comply with any of its agreements or obligations, Owner may perform or comply with such agreements or obligations in its own name or in Customer's name as attorney-in-fact and the amount of any payments and expenses of Owner incurred in connection with such performance or compliance, together with interest thereon at the Default Interest Rate, shall be payable by Customer to Owner upon demand. No express or implied waiver by Owner of any default or breach of Customer's obligations hereunder shall constitute a waiver of any other default or breach of Customer's obligations hereunder.

**13. Miscellaneous.** All Schedules shall be binding on Customer's successors and permitted assigns, and shall be for the benefit of Owner and its successors and Assignees. **EACH SCHEDULE SHALL BE GOVERNED BY THE LAWS OF MICHIGAN, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICT OF LAWS OR CHOICE OF LAW. THE PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATING TO ANY SCHEDULE OR EQUIPMENT.** The parties do not intend to exceed any applicable usury laws. If for any reason a Schedule is held to constitute a loan of money, any amounts payable under such Schedule in excess of the applicable highest lawful rate of interest shall be deemed a prepayment of any principal amount due under the Schedule and, if such principal is paid in full, such excess amounts shall be immediately refunded to Customer. Customer agrees that it shall upon request from Owner, promptly provide to Owner a copy of Customer's most recent annual financial statements and any other financial information of Customer (including interim financial statements) that Owner may request. Customer authorizes Owner to share such information with Owner's affiliates for purposes of credit approval. Customer expressly authorizes credit reporting agencies and other persons to furnish credit information to Owner and its Assignees (and prospective Assignees), separately or jointly with other creditors or Owners, for use in connection with this Agreement or any Schedule. Customer agrees that Owner may provide any information or knowledge Owner may have about Customer or about any matter relating to this Agreement or any Schedule to any one or more Assignees (and prospective Assignees). Owners and joint users of such information are authorized to receive and exchange credit information and to update such information as appropriate during the term of this Agreement and each Schedule. Information about Customer may be used for marketing and administrative purposes and shared with Owner's affiliates. Customer may direct Owner not to share that information (except transaction and experience information and information needed for credit approval) with Owner's affiliates by writing to the Owner's address referenced above. This Agreement will not be valid until accepted by Owner (as evidenced by Owner's signature below). Customer represents and warrants to Owner, that effective on the date on which Customer executes this Agreement and each Schedule: (i) if Customer is a partnership, corporation, limited liability company or other legal entity, the execution and delivery of this Agreement and each Schedule and the performance of Customer's obligations hereunder and thereunder have been duly authorized by all necessary action on the part of the Customer; (ii) the person signing this Agreement and each Schedule on behalf of Customer is duly authorized; (iii) all information provided by Customer to Owner in connection with this Agreement and each Schedule is true and correct; and (iv) this Agreement and each Schedule constitute legal, valid and binding obligations of Customer, enforceable against Customer in accordance with their terms. This Agreement and each Schedule may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Agreement and each Schedule by Customer and when manually countersigned by Owner or attached to Owner's original signature counterpart and/or in Owner's possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. No security interest in this Agreement and each Schedule can be perfected by possession of any counterpart other than the counterpart bearing Owner's original signature. Customer agrees not to raise as a defense to the enforcement of this Agreement or any related documents hereto the fact that such documents were executed by electronic means. Any provision of a Schedule which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of the Schedule, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. Paragraph headings are for convenience only, are not part of the Schedule and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Customer has not received any tax or accounting advice from Owner. This Agreement, any Schedules, any attachments to this Agreement or any Schedules and any express warranties made by Stryker Sales, LLC constitute the entire agreement between the parties hereto regarding the Equipment and its use and possession and supersede all prior agreements and discussions regarding the Equipment and any prior course of conduct. There are no agreements, oral or written, between the parties which are contrary to the terms of this Agreement and such other documents.

CUSTOMER HAS READ THIS AGREEMENT AND EACH SCHEDULE BEFORE SIGNING IT.

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales, LLC		
Signature:	Electronically signed by: Devon Ivy Reason: I approve this document Date: Aug 23, 2023 16:32 EDT	Date:
Print name: Devon Ivy		
Title: Controller		

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Legal Services Department



**EQUIPMENT SCHEDULE NO. 001 TO MASTER AGREEMENT NO.11310194302  
(Equipment Lease Schedule)**

<b>Owner:</b> Flex Financial, a division of Stryker Sales, LLC 1901 Romence Road Parkway Portage, MI 49002	<b>Customer:</b> KERN COUNTY HOSPITAL AUTHORITY 1700 MOUNT VERNON AVE BAKERSFIELD, California 93306
<b>Supplier:</b> Stryker Sales, LLC, 4100 E. Milham Avenue, Kalamazoo, MI 49001	
<b>Equipment description:</b> see part I on attached Exhibit A (and/or as described in Invoice(s) or equipment list attached hereto and made a part hereof collectively, the "Equipment")	
<b>Equipment Location:</b> 1700 MOUNT VERNON AVE, BAKERSFIELD, California 93306-4018	
<b>Schedule of periodic rent payments:</b>  8 Quarterly payments of \$252,912.33 (Includes Applicable Sales Tax)	
<b>Term in months:</b> 22	<b>Minimum monthly uses:</b> <u>n/a</u>
<b>Fee per use:</b> <u>n/a</u>	
<b>Purchase term (If blank, the Fair Market Value Option will be deemed chosen):</b> <u>\$1 Buyout Option</u>	
<b>TERMS AND CONDITIONS</b>	
<p><b>1. Lease agreement/term/acceptance/payments.</b> The undersigned Customer ("Customer") unconditionally and irrevocably agrees to lease from the Owner whose name is listed above ("Owner") the Equipment described above, on the terms specified in this Schedule, including all attachments to this Schedule and in the Master Agreement referred to above (as amended from time to time, the "Agreement"). Except as modified herein, the terms of the Agreement are hereby ratified and incorporated into this Schedule as if set forth herein in full, and shall remain fully enforceable throughout the Term of this Schedule (as defined below). Capitalized terms used and not otherwise defined in this Schedule have the respective meanings given to those terms in the Agreement. The term of this Schedule ("Term") shall start on the day the Equipment is delivered to Customer and shall continue for the number of months set forth above beginning with the Rent Commencement Date (as defined below). Customer shall be deemed to have accepted the Equipment for lease under this Schedule on the date that is ten (10) days after the date it is shipped to Customer by the Supplier ("Acceptance Date") and, at Owner's request, Customer shall confirm for Owner such acceptance in writing. No acceptance of any item of Equipment may be revoked by Customer. The Periodic Rent Payments described above ("Periodic Rent") shall be paid commencing on (i) the first day of the month following the month in which the Acceptance Date occurs, if the Acceptance Date is on or before the 15th of the month, or (ii) the first day of the second month following the month in which the Acceptance Date occurs, if the Acceptance Date is after the 15th day of the month ("Rent Commencement Date"). Unless otherwise instructed by Owner in writing, all Periodic Rent and other amounts due hereunder shall be made to Owner's address above. Any payment by or on behalf of Customer that purports to be payment in full for any obligation under this Schedule may only be made after Owner's prior written agreement to accept such payment amount. Periodic Rent is due monthly beginning on the Rent Commencement Date and continuing on the same day of each consecutive month thereafter during the Term regardless of whether or not Customer receives an invoice for it. The Minimum Monthly Uses and Fee Per Use described above shall not affect the amount of any monthly payment.</p> <p><b>2. Purchase terms/return of equipment.</b> If either the Fair Market Value Option or the Fixed Purchase Option applies to this Schedule, upon expiration of the Term and provided that this Schedule has not been terminated early and Customer is in compliance with this Schedule in all respects, Customer may upon at least 90 but not more than 180 days prior written notice to Owner exercise the applicable purchase option and upon the giving of such notice Customer shall be irrevocably and unconditionally obligated to purchase all (but not less than all) of the Equipment for the purchase amount shown above (plus all applicable Taxes), which amount shall be due and payable upon the expiration of the Term of this Schedule. If the \$1.00 Buyout applies to this Schedule, upon expiration of the Term, Customer shall pay all amounts owed by Customer hereunder but unpaid as of such date and \$1.00 (plus all applicable Taxes). Any purchase of the Equipment by Customer pursuant to a purchase option or \$1.00 Buyout shall be "AS IS, WHERE IS", without representation or warranty of any kind from Owner. "Fair Market Value" shall be the amount determined by Owner as the fair market value of the Equipment on the basis of an arms-length sale between an informed and willing buyer who is currently in possession of the Equipment and a willing Seller under no compulsion to sell. Upon (x) any early termination of this Schedule or (y) the expiration of the Term of this Schedule and Customer has not exercised any option to purchase available to it under the terms of this Schedule, if any, the \$1.00 Buyout does not apply and Customer has given Owner at least 90 days but not more than 180 days written notice by certified mail prior to the end of the Term (the "Return Notice") that Customer will return the Equipment to Owner, Customer shall at its expense, pack and insure the related Equipment and send it freight prepaid to a location designated by Owner in the contiguous 48 states of the United States. If Customer fails to give the Return Notice or the Return Notice is not sent timely, the Term will be automatically extended (upon the same terms and payments) until the first Periodic Rent Payment date which is more than 90 days after Customer has given Owner written notice by certified mail that Customer will return the Equipment to Owner and at the end of such extended Term, Customer shall return the Equipment as described above. All Equipment upon its return to Owner shall be in the same condition and appearance as when delivered to Customer, excepting only reasonable wear and tear from proper use and all such Equipment shall be eligible for manufacturer's maintenance. If Customer fails to return the Equipment as and when required, Customer shall continue to remit Periodic Rent ("Remedial Payments") to Owner on the dates such payments would be payable under this Schedule as if this Schedule had not expired or terminated.</p> <p><b>3. Miscellaneous.</b> If Customer fails to pay (within thirty days of invoice date) any freight, sales tax or other amounts related to the Equipment which are not financed hereunder and are billed directly by Owner to Customer, such amounts shall be added to the Periodic Rent Payments set forth above (plus interest or additional charges thereon) and Customer authorizes Owner to adjust such Periodic Rent Payments accordingly. If the Fair Market Value Option or Fixed Purchase Option applies to this Schedule, Customer agrees that this Schedule is intended to be a "finance lease" as defined in §2A-103(1)(g) of the Uniform Commercial Code. This Schedule will not be valid until signed by Owner. Customer acknowledges that Customer has not received any tax or accounting advice from Owner. If Customer is required to report the components of its payment obligations hereunder to certain state and/or federal agencies or public health coverage programs such as Medicare, Medicaid, SCHIP or others, and such amounts are not adequately disclosed in any attachment hereto, then Stryker Sales, LLC will, upon Customer's written request, provide Customer with a detailed outline of the components of its payments which may include equipment, software, service and other related components.</p>	

**CUSTOMER HAS READ (AND UNDERSTANDS THE TERMS OF) THIS SCHEDULE BEFORE SIGNING IT:**

<b>Customer signature</b>		<b>Accepted by Flex Financial, a division of Stryker Sales, LLC</b>	
<b>Signature:</b>  	<b>Date:</b>  	<b>Signature:</b>  <i>Electronically signed by: Devon Ivy</i> <i>Reason: I approve this document</i> <i>Date: Aug 23, 2023 16:32 EDT</i>	<b>Date:</b>  
<b>Print name:</b>  		<b>Print name:</b> Devon Ivy	
<b>Title:</b>  		<b>Title:</b> Controller	

## Exhibit A to Lease Schedule001 to Master Agreement No.11310194302

### Description of equipment

Customer name: KERN COUNTY HOSPITAL AUTHORITY

Delivery Location: 1700 MOUNT VERNON AVE, BAKERSFIELD, California , 93306-4018

#### Part I - Equipment/Service Coverage (If applicable)

Model number	Equipment description	Quantity
4507-000-000	SYSTEM 8 CD NXT	10
4505-000-000	System 8 Cordless Driver	10
4505-133-000	1/4" LOCKING KEYLESS CHUCK	10
4100-400-000	Sagittal Saw Attachment	10
4100-210-000	AO Large Reamer	10
4100-231-000	Reamer	10
4100-131-000	1/4" DRILL WITH KEY	10
4100-135-000	Hudson/Modified Trinkle Drill	10
4100-110-000	AO Small Drill	20
4100-120-000	T-Latch	10
4405-554-000	Trauma Perforated Container	10
4100-126-000	Adjustable Pin Collet (2.0-3.2mm)	10
4100-062-000	WIRE COLLET	10
7400-015-000	TPX MICRO DRILL	1
7400-031-000	TPX OSCILLATING SAW	1
7400-034-000	TPX SAGITTAL SAW	1
7400-037-000	TPX RECIP SAW	1
7400-004-000	TPX CABLE	2
7400-009-000	TPX HANDSWITCH	2
5100-015-250	MICRODRILL STRAIGHT ATTACHMENT	1
1900-099-000	F1 U-Driver	1
1900-012-000	Pistol Battery Pack	2
1900-110-000	F1 Small AO Chuck	1
1900-120-000	F1 T-LATCH	1
1900-132-000	F1 5/32" Chuck	1
1900-062-000	F1 Wire Collet	1
6400-554-000	Small Bone Perforated	1
5500-050-000	Sonopet IQ Ultrasonic Aspirator Console	1
5500-255-000	Sonopet IQ Universal Angled Handpiece	1
5500-800-278	Sonopet IQ Sterilization Tray	2
5450-850-410	Sonopet Cart	1
5450-800-039	Sonopet Torque Wrench,7mm	2
5500-007-000	Sonopet IQ Advanced Foot Pedal - Wired	1
1688010000	PKG, 1688 Camera Control Unit (CCU)-standard	6
0220230300	PKG, L11 LED Light Source with AIM-standard	6
0240099155	Connected OR Cart, 120 V-standard	6
0240200222	CONNECTED OR HUB BASE WITH DEVICE CONTROL KIT-standard	6

0240031300	Pkg, 32" 4K OLED Surgical Display-standard	10
1688610122	PKG, 1688 AIM 4K CAMERA HEAD WITH INTEGRATED COUPLER-standard	20
0620050000	PNEUMOCLEAR PLUS CO2 CONDITIONING INSUFFLATOR (AMERICAS)-standard	6
0240031065	Pkg, SYNK 4K Wireless Transmitter-standard	6
0240031075	Pkg, SYNK 4K Wireless Receiver-standard	4
0233050400	FG, SAFELIGHT FIBER OPTIC CABLE WITH ADVANCED IMAGING MODALITY, 5 MM-standard	20
0502937010K	AIM HD LAPAROSCOPE, AUTOCLAVABLE, 10MM x 0°, 33CM, KIT-standard	7
0502937030K	AIM HD LAPAROSCOPE, AUTOCLAVABLE, 10MM x 30°, 33CM, KIT-standard	7
0502537010K	AIM HD LAPAROSCOPE, AUTOCLAVABLE, 5.4MM x 0°, 30CM, KIT-standard	7
0502537030K	AIM HD LAPAROSCOPE, AUTOCLAVABLE, 5.4MM x 30°, 30CM, KIT-standard	7
0502444030	Precision IE 4K Eyepiece Arthroscope, Autoclavable, 4mm x 30°, 140mm, Speed-Lock-standard	3
0502444070	Precision IE 4K Eyepiece Arthroscope, Autoclavable, 4mm x 70°, 140mm, Speed-Lock-standard	1
0502991000	ASSY, 4MM CYSTOSCOPE, KS SERIES 0DEG-standard	3
0502991030	ASSY, 4MM CYSTOSCOPE, KS SERIES 30DEG-standard	3
0502991012	ASSY, 4MM CYSTOSCOPE, KS SERIES 12DEG-standard	3
0502991070	ASSY, 4MM CYSTOSCOPE, KS SERIES 70DEG-standard	3
0240099110K	FLAT PANEL ROLL STAND KIT-standard	4
0240080230	SDP1000-standard	6

**Total equipment:** \$1,723,255.91

**Freight:** \$6,301.10

**Total upfront sales tax:** \$142,688.45

**Total Amount:** \$1,872,245.46

Customer signature		Accepted by Flex Financial, a division of Stryker Sales, LLC	
Signature:	Date:	Signature:	Date:
		<i>Devon Ivy</i> Electronically signed by: Devon Ivy Reason: I approve this document Date: Aug 23, 2023 16:32 EDT	
Print name:		Print name: Devon Ivy	
Title:		Title: Controller	





## Insurance Authorization and Verification

Date: August 03, 2023

Schedule 001 To Master Agreement Number 11310194302

To: KERN COUNTY HOSPITAL AUTHORITY ("Customer")  
1700 MOUNT VERNON AVE  
BAKERSFIELD, California 93306-4018

From: Flex Financial, a division of Stryker Sales, LLC ("Creditor")  
1901 Romence Road Parkway  
Portage, MI 49002

**TO THE CUSTOMER:** In connection with one or more financing arrangements, Creditor may require proof in the form of this document, executed by both Customer\* and Customer's agent, that Customer's insurable interest in the financed property (the "Property") meets the requirements as follows, with coverage including, but not limited to, fire, extended coverage, vandalism, and theft:

Creditor, and its successors and assigns shall be covered as both ADDITIONAL INSURED and LENDER'S LOSS PAYEE with regard to all equipment financed or acquired for use by policy holder through or from Creditor.

Customer must carry GENERAL LIABILITY (and/or, for vehicles, Automobile Liability) in the amount of no less than \$1,000,000.00 (one million dollars).

Customer must carry PROPERTY Insurance (or, for vehicles, Physical Damage Insurance) in an amount no less than the 'Insurable Value' \$1,723,255.91 with deductibles no more than \$10,000.00.

\*PLEASE PROVIDE THE INSURANCE AGENTS INFORMATION REQUESTED BELOW & SIGN WHERE INDICATED

By signing, Customer authorizes the Agent named below: 1) to complete and return this form as indicated; and 2) to endorse the policy and subsequent renewals to reflect the required coverage as outlined above.

Insurance agency:	See Self insurance letter	Customer signature	
Agent name:	attached	Signature:	Date:
Address:		Print name:	
Phone/fax:		Title:	
Email address:			

\*Customer: Creditor will fax the executed form to your insurance agency for endorsement. In Lieu of agent endorsement, Customer's agency may submit insurance certificates demonstrating compliance with all requirements. If fully executed form (or Customer-executed form plus certificates) is not provided within 15 days, we have the right but not the obligation to obtain such Insurance at your expense. Should you have any questions please contact Michelle Warren at 269-389-1909.

**TO THE AGENT:** In lieu of providing a certificate, please execute this form in the space below and promptly fax it to Creditor at 877-204-1332 . This fully endorsed form shall serve as proof that Customer's Insurance meets the above requirements.

Agent hereby verifies that the above requirements have been met in regard to the Property listed below.

Agent signature	
Signature:	Date:
Print name:	
Title:	
Carrier name:	
Carrier policy number :	
Policy expiration date:	

Insurable value: \$1,723,255.91

ATTACHED: PROPERTY DESCRIPTION FOR Schedule 001 To Master Agreement Number 11310194302

See Exhibit A to Schedule 001 To Master Agreement Number 11310194302

TOGETHER WITH ALL REPLACEMENTS, PARTS, REPAIRS, ADDITIONS, ACCESSIONS AND ACCESSORIES INCORPORATED THEREIN OR AFFIXED OR ATTACHED THERETO AND ANY AND ALL PROCEEDS OF THE FOREGOING, INCLUDING, WITHOUT LIMITATION, INSURANCE RECOVERIES.



July 1, 2023

### Statement of Self-Insurance

The Kern County Hospital Authority ("Authority"), a local unit of government, which owns and operates Kern Medical Center (a/k/a Kern Medical), is self-insured for Hospital Professional Liability (malpractice), General Liability, Workers' Compensation, and Employers Liability. For these coverages, the Authority carries excess insurance above the following self-insured retentions: \$2,000,000 for Hospital Professional Liability; \$1,000,000 for General Liability; and \$1,000,000 for Workers' Compensation and Employers Liability.

These exposures, including contractual liability, arising out of Authority operations are covered by the Authority's self-insurance program undertaken pursuant to Government Code Section 990 and Health and Safety Code Section 101855.

Under this self-insurance program, the Authority will bear all risk of bodily injury and property damage losses that are the responsibility of the Authority under current law and contracts. This program is currently in effect and will remain in effect as renewed each year by the Authority.

Very truly yours,

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



## State and Local Government Customer Rider

This State and Local Government Customer Rider (the "Rider") is an addition to and hereby made a part of **SCHEDULE001 TO MASTER AGREEMENT No. 11310194302** (the "Agreement") between Flex Financial, a division of Stryker Sales, LLC ("Owner") and KERN COUNTY HOSPITAL AUTHORITY ("Customer") to be executed simultaneously herewith and to which this Rider is attached. Capitalized terms used but not defined in this Rider shall have the respective meanings provided in the Agreement. Owner and Customer agree as follows:

1. Customer represents and warrants to Owner that as of the date of, and throughout the Term of, the Agreement: (a) Customer is a political subdivision of the state or commonwealth in which it is located and is organized and existing under the constitution and laws of such state or commonwealth; (b) Customer has complied, and will comply, fully with all applicable laws, rules, ordinances, and regulations governing open meetings, public bidding and appropriations required in connection with the Agreement, the performance of its obligations under the Agreement and the acquisition and use of the Equipment; (c) The person(s) signing the Agreement and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents") have the authority to do so, are acting with the full authorization of Customer's governing body, and hold the offices indicated below their signatures, each of which are genuine; (d) The Documents are and will remain valid, legal and binding agreements, and are and will remain enforceable against Customer in accordance with their terms; and (e) The Equipment is essential to the immediate performance of a governmental or proprietary function by Customer within the scope of its authority and will be used during the Term of the Agreement only by Customer and only to perform such function. Customer further represents and warrants to Owner that, as of the date each item of Equipment becomes subject to the Agreement and any applicable schedule, it has funds available to pay all Agreement payments payable thereunder until the end of Customer's then current fiscal year, and, in this regard and upon Owner's request, Customer shall deliver in a form acceptable to Owner a resolution enacted by Customer's governing body, authorizing the appropriation of funds for the payment of Customer's obligations under the Agreement during Customer's then current fiscal year.
2. To the extent permitted by applicable law, Customer agrees to take all necessary and timely action during the Agreement Term to obtain and maintain funds appropriations sufficient to satisfy its payment obligations under the Agreement (the "Obligations"), including, without limitation, providing for the Obligations in each budget submitted to obtain applicable appropriations, causing approval of such budget, and exhausting all available reviews and appeals if an appropriation sufficient to satisfy the Obligations is not made.
3. Notwithstanding anything to the contrary provided in the Agreement, if Customer does not appropriate funds sufficient to make all payments due during any fiscal year under the Agreement and Customer does not otherwise have funds available to lawfully pay the Agreement payments (a "Non-Appropriation Event"), and provided Customer is not in default of any of Customer's obligations under such Agreement as of the effective date of such termination, Customer may terminate such Agreement effective as of the end of Customer's last funded fiscal year ("Termination Date") without liability for future monthly charges or the early termination charge under such Agreement, if any, by giving at least 60 days' prior written notice of termination ("Termination Notice") to Owner.
4. If Customer terminates the Agreement prior to the expiration of the end of the Agreement's Initial (primary) term, or any extension or renewal thereof, as permitted under Section 3 above, Customer shall (i) on or before the Termination Date, at its expense, pack and insure the related Equipment and send it freight prepaid to a location designated by Owner in the contiguous 48 states of the United States and all Equipment upon its return to Owner shall be in the same condition and appearance as when delivered to Customer, excepting only reasonable wear and tear from proper use and all such Equipment shall be eligible for manufacturer's maintenance, (ii) provide in the Termination Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (iii) deliver to Owner, upon request by Owner, an opinion of Customer's counsel (addressed to Owner) verifying that the Non-Appropriation Event as set forth in the Termination Notice has occurred, and (iv) pay Owner all sums payable to Owner under the Agreement up to and including the Termination Date.
5. Any provisions in this Rider that are in conflict with any applicable statute, law or rule shall be deemed omitted, modified or altered to the extent required to conform thereto, but the remaining provisions hereof shall remain enforceable as written.

Customer signature		Accepted by Flex Financial, a division of Stryker Sales, LLC	
Signature:	Date:	Signature:	Date:
<div style="border: 1px solid black; height: 40px; width: 100%;"></div>	<div style="border: 1px solid black; height: 40px; width: 100%;"></div>	<div style="border: 1px solid black; height: 40px; width: 100%; position: relative;"> <div style="position: absolute; top: 5px; right: 5px; font-size: 0.8em;">                     Electronically signed by: Devon Ivy                      Reason: I approve this document                      Date: Aug 23, 2023 16:32 EDT                 </div> </div>	<div style="border: 1px solid black; height: 40px; width: 100%;"></div>
Print name:		Print name:	
<div style="border: 1px solid black; height: 30px; width: 100%;"></div>		<div style="border: 1px solid black; height: 30px; width: 100%; text-align: center;">Devon Ivy</div>	
Title:		Title:	
<div style="border: 1px solid black; height: 30px; width: 100%;"></div>		<div style="border: 1px solid black; height: 30px; width: 100%; text-align: center;">Controller</div>	

## Opinion of Counsel Letter

August 03, 2023

Flex Financial, a division of Stryker Sales, LLC  
1901 Romence Road Parkway  
Portage, MI 49002

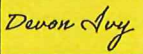
Gentlemen/Ladies:

Reference is made to SCHEDULE 001 TO MASTER AGREEMENT NO. 11310194302 (collectively, the "Agreement") between Flex Financial a division of Stryker Sales, LLC, and KERN COUNTY HOSPITAL AUTHORITY (herein called "Customer") for the use of certain equipment, goods and/or services as described in the Agreement. Unless otherwise defined herein, terms which are defined or defined by reference in the Agreement or any exhibit or schedule thereto shall have the same meaning when used herein as such terms have therein.

The undersigned is Counsel for the Customer in connection with the negotiation, execution and delivery of the Agreement, and as such I am able to render a legal opinion as follows:

1. The Customer is a public body corporate and politic of the State of California and is authorized by the Constitution and laws of the State of California to enter into the transactions contemplated by the Agreement and to carry out its obligations thereunder. The Customer's name set forth above is the full, true and correct legal name of the Customer.
2. The Agreement set forth above has been duly authorized, executed and delivered by the Customer and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms.
3. No further approval, consent or withholding of objections is required from any federal, state or local governmental authority and the Customer complied with all open meeting and public bidding laws with respect to the entering into or performance by the Customer of the Agreement and the transactions contemplated thereby.
4. The Customer has no authority (statutory or otherwise) to terminate the Agreement prior to the end of its term for any reason other than pursuant to the State and Local Government Customer Rider (if there is such a Rider attached to the Agreement) for the nonappropriation of funds to pay the Agreement payments for any fiscal period during the term of the Agreement.

Very truly yours,

Signature	
<b>Signature:</b> 	<b>Date:</b> Electronically signed by: Devon Ivy Reason: I approve this document Date: Aug 23, 2023 16:32 EDT
<b>Print Name:</b> Devon Ivy	
<b>Title:</b> Controller	



**ADDENDUM TO MASTER AGREEMENT NO. 11310194302 AND EQUIPMENT SCHEDULE NO. 001  
THERETO (EQUIPMENT LEASE SCHEDULE) BETWEEN KERN COUNTY HOSPITAL AUTHORITY AND  
FLEX FINANCIAL, A DIVISION OF STRYKER SALES, LLC**

This Addendum is hereby made a part of the agreement (the "Agreement") described above, and the schedule described above (the "Schedule"). In the event of a conflict between the provisions of this Addendum and the provisions of the Agreement or Schedule, the provisions of this Addendum shall control.

The parties hereby agree as follows:

1. The following provision is hereby added to the end of Section 7 of the Agreement:

Notwithstanding anything to the contrary herein, Customer shall be entitled to self-insure with respect to its insurance obligations hereunder so long as such self insurance is maintained in a manner and fashion typical of institutions of Customer's size and nature, including suitable re-insurance structures and so long as (i) no event of default has occurred and remains outstanding and (ii) Customer promptly delivers certifications or other reasonable proof of self insured amounts and reinsurance upon Owner's request, including without limitation, financial statements related thereto. Owner, but not any Assignee, agrees to defend, protect, indemnify and hold harmless Customer and each of its officers, directors, employees and agents from and against any and all product liability and regulatory liability, including, without limitation, environmental liabilities, and if purchasing services, any and all act and omissions, and any and all attorney fees resulting from any claims by third parties for loss, damage or injury (including death) allegedly caused by any product purchased under this Agreement (except to the extent of any liability caused by the sole negligence of Customer). The liabilities or obligations of Customer with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Customer and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

2. The second sentence of Section 13 of the Agreement is hereby amended in its entirety to read as follows:

EACH SCHEDULE SHALL BE GOVERNED BY THE LAWS OF CALIFORNIA, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICT OF LAWS OR CHOICE OF LAW.

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales, LLC		
Signature:	<i>Devon Ivy</i> <small>Electronically signed by: Devon Ivy Reason: I approve this document Date: Aug 23, 2023 16:32 EDT</small>	Date:
Print name: Devon Ivy		
Title: Controller		




# KERN COUNTY HOSPITAL AUTHORITY- SCH001 8.22.23 ah mw

Final Audit Report

2023-08-23


Created:	2023-08-23
By:	Michelle Warren (michelle.warren@stryker.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA7s-knWTiRV8vu_ZrxTkkf5w6umj5Zmp0


## "KERN COUNTY HOSPITAL AUTHORITY-SCH001 8.22.23 ah mw" History

 Document created by Michelle Warren (michelle.warren@stryker.com)  
2023-08-23 - 8:27:01 PM GMT- IP address: 64.136.252.163

 Document emailed to Devon Ivy (devon.ivy@stryker.com) for signature  
2023-08-23 - 8:29:00 PM GMT

 Email viewed by Devon Ivy (devon.ivy@stryker.com)  
2023-08-23 - 8:30:54 PM GMT- IP address: 97.92.39.83


 Devon Ivy (devon.ivy@stryker.com) authenticated with Adobe Acrobat Sign.  
Challenge: The user opened the agreement.  
2023-08-23 - 8:31:24 PM GMT

 Devon Ivy (devon.ivy@stryker.com) authenticated with Adobe Acrobat Sign.  
Challenge: The user completed the signing ceremony by clicking on 'Click to Sign' button.  
2023-08-23 - 8:32:28 PM GMT

 Document e-signed by Devon Ivy (devon.ivy@stryker.com)  
Signing Reasons

- I approve this document (Signature 2)
- I approve this document (Signature 3)
- I approve this document (Signature 6)
- I approve this document (Signature 5)
- I approve this document (Signature 1)
- I approve this document (Signature 4)

Signature Date: 2023-08-23 - 8:32:29 PM GMT - Time Source: server- IP address: 97.92.39.83

 Agreement completed.  
2023-08-23 - 8:32:29 PM GMT



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

September 20, 2023

**SUBJECT:** Proposed Kern County Hospital Authority Purchase Order with Heredia Cabling Solutions, to provide infrastructure for the Philips Telemetry upgrades

**Requested Action:** Make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, 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 is requesting your Board approve the proposed Purchase Order with Heredia Cabling Solutions, to provide infrastructure updates to support the new Philips Telemetry patient monitoring system at Kern Medical.

The Purchase Order is effective as of September 20, 2023 with construction anticipated to be completed within three (3) months of commencement. The projected construction cost for this project is \$480,323, which includes future change orders up to 10% of the original contract price of \$436,657.

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 Purchase Order, authorize the 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 \$436,657.

**Kern County Hospital Authority  
Construction Services Division  
PURCHASE ORDER**

**TO:** Heredia Cabling Solutions  
5907 Woodmere Drive

**DATE:** 9/20/2023  
**Purchase Order No.:** 2324-010

Bakersfield, CA 93313

Purchase Order Information as follows:

<b>Project Name:</b>	<u>Philips Network Cabling</u>
<b>Project Number:</b>	<u>10093</u>
<b>Original Purchase Order Amount</b>	<u>\$436,656.95</u>

**Governing Documents:**

Terms & Conditions  
Heredia Quote KM-131 Dated 6/27/2023

**Summary:**

Provide all labor, material, and equipment to install Phillips AP Cabling throughout the facility, as outlined in the Heredia Quotation, attached hereto and incorporated herein by this reference.

**Total Costs:**

Total cost to include all bonds, insurance and taxes.

**Schedule:**

Coordinate all work with Matthew Smith and Ezzat Khalil with Kern Medical IT Department.

**Labor Compliance:**

The Authority 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 Authority) 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 Hospital, located at 1700 Mt. Vernon Avenue, Bakersfield, CA 93305 and is hereby incorporated herein by this reference.

## KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER TERMS & CONDITIONS

This Purchase Order is for the purchase of goods/services on the attached Bid, Proposal, Quote, Order, Agreement, or other ("Proposal"). If there is a conflict between the Proposal and the Purchase Order, then this Purchase Order shall control.

### **Obligations of Vendor**

1. Vendor shall provide products/services as set forth in the attached Proposal. Such order(s) may be modified by mutual written amendment of the Parties.
2. Vendor shall provide products/services at the pricing identified in the Proposal. Unless otherwise clearly specified, the prices stated herein do not include California state sales or use tax.
3. Vendor warrants possession of clear and unencumbered title to the products and/or services involved herein.
4. Unless stated otherwise on the Proposal, all products provided by the Vendor shall be new, unused, in original manufacturer packaging and labeling, and shall conform to the specifications provided within the Proposal.
5. Vendors may be required to provide proof of insurance for one or more of the following types of insurance coverages as determined by KCHA:

(a) **Workers' Compensation Insurance** in accordance with the provisions of section 3700 of the California Labor Code. This policy shall include employer's liability insurance with limits of at least one million dollars (\$1,000,000). Include a cover sheet stating the business is a sole proprietorship, if applicable.

(b) **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as may be determined by the KCHA Risk Manager, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any Purchase Order or agreement with KCHA), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of vendor's performance of work hereunder. The amount of said insurance coverage required hereunder shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

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

6. Vendor agrees to indemnify, defend and hold harmless KCHA and KCHA's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses



(including, but not limited to, reasonable attorneys' fees of counsel, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of vendor or vendor's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons, damage to any property, regardless of where located, including the property of KCHA; any claims of product liability; and any workers' compensation claim or suit arising from or connected with any services performed by or on behalf of vendor by any person or entity. Further, Vendor shall indemnify, defend and hold KCHA, its officers, agents, servants and employees harmless from liability of any nature or kind as a result of KCHA's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, or articles or appliances furnished or used under any purchase order.

7. Vendor shall comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference. While on KCHA property, Vendor agrees to conform to KCHA policies and any direction given to them by KCHA staff including health mandates.

#### **Obligations of KCHA**

8. KCHA shall receive shipments during regular business hours, or otherwise as previously arranged, at its receiving dock or other designated locations, and shall perform receiving inspections(s) in a time and manner appropriate for the products involved.

9. KCHA shall notify Vendor of any discrepancies in products shipped or services rendered, be the quantity, condition, or otherwise, promptly upon completion of the receiving inspection

#### **Delivery, Invoicing, and Payment**

10. Unless stated otherwise on the Proposal, all goods and services shall be delivered Free On Board (F.O.B) Destination, with transfer of title and risk of loss to rest with Vendor until goods are accepted by KCHA.

11. As consideration for the products/services provided by Vendor hereunder, KCHA will pay Vendor in accordance with the prices identified on the Proposal. Invoices for payment shall be submitted in a form approved by KCHA and list each good ordered and received. Invoices shall be sent to KCHA for review and processing within 60 days of receipt of goods or payment will not be made. Payment shall be made to Vendor within 30 days of receipt and approval of each invoice by KMC.

12. KCHA may, without cause, terminate this Purchase Order 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 Purchase Order if the other Party fails to substantially perform in accordance with the terms and conditions of this Purchase Order through no fault of the Party initiating the termination. In the event this Purchase Order is terminated by either Party, Vendor shall submit to KCHA 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 Purchase Order as provided in this **Section 12**, KCHA shall pay Vendor for all satisfactory Services rendered by Vendor prior to the effective date of Notice of Termination.

13. The liabilities or obligations of KCHA with respect to its activities pursuant to this Purchase Order shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. Any limitations of liability shall not apply to, affect, or limit: (i) any of Vendor's duties to indemnify Customer in accordance with this Purchase Order and/or (ii) any third party claims.

#### **General Provisions**

14. This Purchase Order, including any attachments hereto and if applicable, the terms found at, [KCHA-](#)



[TC.pdf \(kernmedical.com\)](#) contains the entire agreement between KCHA and Vendor relating to the goods/services identified herein. By signing the KCHA Purchase Order Terms and Conditions, Vendor agrees that in the event there is any inconsistency or conflict between the KCHA Purchase Order terms and conditions and Vendor's terms and conditions, the KCHA Purchase Order terms and conditions shall control.

15. KCHA and Vendor agree that the provisions of this Purchase Order 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. Attorney fees may be awarded at the decision of the arbitrator.

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

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

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

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

related to KMC patients; provided, however, that if Vendor is directly involved in the Enforcement Action, any agreement between KCHA and Vendor shall terminate immediately.

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

**KERN COUNTY HOSPITAL AUTHORITY**  
Responsible KCHA Department

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

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

**HEREDIA CABLING SOLUTIONS, INC.**

By: Gabriel Heredia  
Name: Gabriel Heredia Title: President

"Consultant"

Date: 9-6-2023.

**APPROVED AS TO CONTENT:**

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

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

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

By: Phillip J. Davis  
Hospital Counsel, Kern County Hospital Authority

Date: 9/13/23.





Heredia Cabling Solutions  
5907 Woodmere Dr  
Bakersfield, CA  
93313, US  
+1 877 427 0005

Prepared By:  
Gabriel Heredia  
+1 661 364 5381  
gabe@herediacablingsolutions.com

Date: 8/17/2023  
Project Number: KM-131

Kern Medical  
1700 Mt. Vernon  
Bakersfield, CA  
93306, USA

Ezzat Khalil  
661-444-5604  
Ezzat.Khalil@kernmedical.com

Project: KM-131 Phillips AP Cabling Entire Hospital Revised with (86) Additional Cables

### Scope of Work

The scope of work is as follows:

- Provide and install (2) Cat 6A cables to each of the (87) AP locations. Also, (43) dual data drop locations to be determined by Kern Medical IT. A total of (260) Cat 6A cables will be installed.
- Provide and install cable support systems every 5ft throughout facility to each AP and IDF location.
- Provide and install (1) Cat 6A patch panel in each 1033, 1409, 1540, 2209, 4216, and 4455 and Engineering IDF rooms. Total of (7) patch panels.
- Provide and install EZ Path Fire Rated Pathway for each required fire rated wall.
- Mount (87) Kern Medical provided APs at specific location via blueprint.
- Certify and provide documentation for copper cabling per the ANSI EIA/ TIA Category 5e, 6, 6A standards. Copper cabling will be certified with a Fluke DSK Versiv tester.
- Label all terminals, jacks, and blocks. both twisted pair and optical with permanent markings identifying the cable name, source, or destination and pair count for ease of circuit identification, all labels shall be machine printed.

### Included(+)

1. A material deposit of \$152,591.31 is due upon receiving PO or signed contract. Payment Terms on deposit Net-0. Progress invoices will follow and will be based on the percentage of work completed and will be sent the first day after each task's completion. They shall be payable within 30-days of the invoice date.
2. All cabling will be supported every 5ft and any firewall penetrations will be sealed.
3. All cabling will be installed to the BICSI Commercial Building Telecommunications Cabling Standards.
4. This proposal includes measures required for Infectious Control Procedures, where required.
5. This proposal assumes all work will be performed during normal business hours between 7AM and 4PM.
6. A 4% processing fee will be applied to all invoices paid by credit card.
7. This proposal is valid for 30 days.
8. This proposal includes Prevailing Wage.

### Excluded(-)

1. HCS is excluding the following, which are typically provided by the general or electrical contractors: x-rays, core drills, sleeves, conduits, metal backing, backboard plywood for the I.T. room, core drill fittings and devices, poke-through devices, floor boxes, back boxes, rings and strings, and conduits. Exclude any network equipment.
2. Camera System
3. Any material, equipment for AV equipment, Sound Masking Equipment, Fire Alarm, Security, Access Control or any other low voltage system not mentioned in the scope of work.
4. Cable Tray



**Excluded(-)**

5. Security equipment, magnetic locks, request-to-exit sensors, exit buttons, intercoms, key switches, power supplies, transformers, panic buttons, and card readers.
6. Overtime and weekend work
7. Repair and/or replacement of any existing equipment or material that is not clearly shown or noted on the contract documents.
8. 120V Electrical Work.
9. Demolition
10. Scaffolding
11. Permits
12. Demolition of any System(s).
13. This proposal assumes that any work requested by the customer outside of this scope may result in a change order.
14. Authorization is required before any change order work can commence

**Notes**

Approval and acceptance of our proposal may be made by signing and returning a copy of this proposal letter or by issuing a purchase order that outlines the scope of work. I/We the above authorize HEREDIA CABLING SOLUTIONS, INC. to proceed with the above quote. I/We agree to pay the contract price in accordance to the terms thereof.

Thank you for the opportunity to earn your business. Please contact me with any questions or clarifications.

**Summary**

Subtotal \$ 436,656.95

\$ 436,656.95
---------------

Accepted by

Signature





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

September 20, 2023

**Subject:** Proposed Personal/Professional Services Agreement with Atlas Copco Compressors, LLC. doing business as Accurate Air Engineering to provide preventative maintenance on all vacuum pumps, air compressors, and medical air filters

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

**Summary:**

Kern Medical is requesting your Board's approval of the proposed Personal/Professional Services Agreement with Atlas Copco Compressors, LLC doing business as Accurate Air Engineering to provide preventative maintenance on all vacuum pumps, air compressors, and medical air filters. The proposed Personal/Professional Service Agreement is for a three (3) year term from September 20, 2023 through September 19, 2026 and with a maximum payable of \$300,000.

Counsel cannot approve as to form due to non-standard terms and conditions, which include a limitation of the vendor's liability, limited indemnification of the Authority, and modification of services at vendor's sole discretion. Counsel did engage in negotiations with counsel for Vendor and was able to receive some concessions but the Agreement still contains an increased liability risk.

Although there is an increased liability risk associated with the proposed Agreement, due to Kern Medical's needs for maintained medical air systems, it is recommended that your Board approve the proposed Personal/Professional Service Agreement with non-standard terms, in an amount not to exceed \$300,000 for a three (3) year term beginning September 20, 2023 through September 19, 2026, and authorize the Chairman to sign.

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

THIS SCHEDULE shall be effective on: September 20, 2023 ("Effective Date") and shall terminate no later than September 19, 2026.  
Kern County Hospital Authority Department: Engineering ("Responsible KCHA Department")  
Located at: 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.  
Service Provider: Atlas Copco Compressors, LLC dba Accurate Air Engineering ("Consultant")  
Located at: 16207 Carmenita Road, Cerritos, CA 90703

Consultant is (select one):  
☐ Sole Proprietorship  
☐ Incorporated in the State of California.  
☒ Other (specify) Delaware Limited Liability Company.

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 \$300,000 which includes a not to exceed amount of \$100,000 per year of the Agreement and Consultant will quote each project and a Purchase Order will be used under this Agreement for each approved Project.

(Select one of the following two)

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

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

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

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

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

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

**KERN COUNTY HOSPITAL AUTHORITY**

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

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

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

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

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

**ATLAS COPCO COMPRESSORS, LLC  
DBA ACCURATE AIR ENGINEERING**

By: Mark Salcido  
Mark Salcido

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

By: Philly Smith  
Hospital Counsel, Kern County Hospital Authority

"Consultant"  
Date: 9/5/23

Date: 9/6/2023

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

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

**RECITALS**

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

**AGREEMENT**

1. **Services to be Rendered.** Consultant shall provide the services and products described in **Exhibit A** ("Services").
2. **Compensation to Consultant.** KCHA shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to KCHA.
3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by KCHA based upon the payment schedule selected on Schedule, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible KCHA Department. Consultant shall also provide an informational copy to the CEO. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible KCHA Department.
4. **Term.** This term of this Agreement ("Term") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.
5. **Assignment.** Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the CEO, such consent not to be unreasonably withheld or delayed.
6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and, to the extent required herein, make available to KCHA accurate books and records relative to the Services under this Agreement. Consultant shall, to the extent required by applicable law or permitted by mutual agreement of the parties, 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 be permitted to audit such records upon request.
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 reasonable attorneys' fees of in-

outside counsel, expert fees, costs of staff time, and investigation costs) ("**Claims**") which arise out of or relate to third party claims for personal injury, including death, or tangible personal property damage to the extent caused by any negligent act or omission of Consultant or Consultant's officers, employees, and agents in the performance of this Agreement and subcontractors of any tier hired by Consultant to perform the Services ("**Consultant Representatives**").

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 manufactured, if applicable, and supplied by Consultant or an affiliate of Consultant or KCHA's use in accordance with the normal intended use of same, infringes or misappropriates any United States patent or copyright, or any trade secret or other proprietary right, KCHA shall give Consultant prompt written notice. Consultant shall defend any such Claim with counsel of Consultant's choice and at Consultant's sole cost and shall indemnify KCHA for any costs, including reasonable attorney's fees and damages actually incurred by KCHA relating to such infringement, 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. THIS PARAGRAPH STATES CONSULTANT'S AND ITS AFFILIATES' EXCLUSIVE LIABILITY FOR INFRINGEMENT OF ANY THIRD PARTY'S PATENT, TRADEMARK, TRADE DRESS, AND/OR COPYRIGHT.

d. **Remedy of Infringement Claim.** If the Services are, in Consultant's reasonable opinion, likely to become or do become the subject of a claim of infringement or misappropriation of a United States 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 at Consultant's option:

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 less a reasonable allowance for use, 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 i) modifications or additions to the Services made by KCHA or any third party without the prior written consent of Consultant, ii) to any unauthorized use of the Services by KCHA, iii) any combination of the Services with items, systems, methods, or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a claim is brought against KCHA, or iv) Services supplied according to KCHA's design or instructions wherein compliance therewith has caused Consultant to deviate from Consultant's normal designs or specifications.

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 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.

d. **Warranty.** Consultant warrants that any Service performed by Consultant is performed in a workmanlike manner; unless specified otherwise by Consultant in its written quotation, this warranty shall expire thirty (30) days after the date

Consultant performs the particular Service activity. If Consultant provides parts in connection with the service, Consultant warrants that the parts are free of defects in material and workmanship; this warranty shall expire ninety (90) days from the date Consultant provides such part, unless specified otherwise by Consultant in its applicable written quotation. If Service (and/or parts provided in connection therewith) does not meet the above-stated warranties, KCHA shall promptly within the applicable above-stated warranty period notify Consultant in writing. Consultant shall at its option (i) re-perform the non-conforming portion of the Service and (if applicable) repair or (at Consultant's option) replace the nonconforming part, or (ii) provide a refund or credit allocable to the nonconforming portion of the service/part.

e. THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WRITTEN, ORAL OR IMPLIED, WHETHER WITH RESPECT TO ANY GOODS, SERVICE, OR OTHERWISE. ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

11. **Ownership of Documents.** All reports, documents and other items generated or gathered in the course of providing the Services ("Work Product") shall be considered as part of the goods and/or Services and the physical media on which the Work Product is presented shall be the property of the KCHA upon payment; provided however, that the copyright, patent, trademark, trade secret and other intellectual property contained therein shall be and remain the property of the Consultant.

12. **Rights to Contracted Products.**

No patents, copyrights, trademarks, or other intellectual property is being sold, assigned, or otherwise transferred to KCHA. Without limiting the generality of the foregoing, Consultant shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Consultant or its employees, including but not limited to those developed, discovered, and/or conceived in connection with the manufacture of the ordered Services. It is expressly acknowledged that no drawings, designs, specifications, or anything else provided by Consultant to KCHA shall be deemed to be "work made for hire" as that term is used in connection with the U.S. Copyright Act. Without limiting the generality of the foregoing, all intellectual property rights (including but not limited to copyright) in and to any and all drawings and designs provided by Consultant in response to a KCHA requirement or request are and shall remain owned by Consultant (and/or Consultant's affiliate or other third party who is Consultant's licensor, if applicable). Consultant reserves all rights and waives no claims.

a. **Use by KCHA.** Consultant hereby grants to KCHA, a royalty free, perpetual, world-wide, non-exclusive, non-assignable, non-sublicensable license to use Consultant's intellectual property and Work Product solely for the purpose of installing, operating and maintaining the goods and/or Services. Notwithstanding the foregoing sentence, KCHA may utilize Affiliates and third party contractors who are performing work on behalf of KCHA in the exercise of the foregoing license grant for the purpose of installing, operating and maintaining the goods and/or Services, and KCHA will be entitled to assign the license granted by this section to a customer of KCHA that obtains the goods from KCHA.

b. **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.

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

d. **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 30 days after personal delivery, or after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may terminate this Agreement if the other Party fails to substantially perform in accordance with the material terms and conditions of this Agreement through no fault of the Party initiating the termination and, except for payment obligations, fails to cure such failure within thirty (30) days' written notice from the non-breaching Party, or if such failure cannot be reasonably cured within such period, after the breaching Party fails to pursue continuous, diligent efforts to cure. 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. The obligations of this Section shall not apply to any portion of such confidential information that: (i) is or becomes generally available to the public other than as a result of disclosure by Consultant, its representatives or affiliates, (ii) is independently developed by Consultant, its representatives or affiliates, without reference to or use of such confidential information, (iii) is or becomes available to Consultant on a non-confidential basis from a source other than KCHA when the source is not, to the best of Consultant's knowledge, subject to a confidentiality obligation to KCHA; or (iv) is required to be disclosed by valid legal process or law provided that Consultant who intends to make such disclosure shall promptly notify KCHA, to the extent not prohibited by law, prior to such disclosure and shall reasonably cooperate in attempts to maintain the confidentiality of such confidential information.

**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.** Unless otherwise expressly stated herein, 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 both Parties. Forbearance or indulgence by either Party shall not constitute a waiver of the covenant or condition to be performed by the other Party. Either Party shall be entitled to invoke any remedy available to it under this Agreement or by Applicable Law despite the forbearance or indulgence of the other Party.



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.** 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: Fees  
Exhibit C: Insurance  
Exhibit D: Intentionally Omitted  
Exhibit E: Additional Engineering Terms

41. **Force Majeure.** If a Party is not able to perform or is delayed due to any cause beyond its reasonable control (including but not limited to acts of God, strike, act or omission of any governmental authority, act of war or terrorism, act of the public enemy, embargo, delays of carriers, and/or delays by Consultant's usual suppliers,

or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing), the time of performance shall be extended by the amount of time reasonably sufficient to make up for such delay.

42. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF EQUIPMENT OR SERVICES, DOWNTIME COSTS, AND DELAY COSTS), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. NOTWITHSTANDING ANYTHING ELSE, THE TOTAL LIABILITY, IN THE AGGREGATE, OF EITHER PARTY ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO PERFORMANCE OR BREACH THEREOF SHALL BE LIMITED TO THE AMOUNT OF MONEY RECEIVED BY CONSULTANT FROM KCHA FOR THE PARTICULAR GOOD/SERVICE GIVING RISE TO THE CLAIM (REGARDLESS OF WHETHER DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE).

## **EXHIBIT A SERVICES**

Consultant shall provide cleaning of the air compressors, vacuum pumps, medical air systems, medical gas systems, air balance testing & reporting. Consultant shall also perform work on air compressors and vacuum pumps, replace purity filters for medical air and gas systems. Supply supplies for purchase for in house repairs on Air/HVAC units for Kern Medical and other facilities owned and operated by Kern County Hospital Authority, as directed by authorized KCHA staff.

# Atlas Copco Compressor Services



## KERN COUNTY HOSPITAL AUTHORITY

Daniel Bowen

Quote no: 179471614

Created: 03/10/23

Expiration: 04/09/23

*Sustainable Productivity*

**Atlas Copco**





Quote number: 179471614  
Created on: 03/10/23

Attn to: **KERN COUNTY HOSPITAL AUTHORITY**  
Daniel Bowen  
1700 Mt Vernon Ave  
Bakersfield, 93306-4018  
Phone: +1 661-047-2277 ext 4  
Mobile:

daniel.bowen@kernmedical.com

**Atlas Copco Compressor Services**  
Contact person: Mark Salcido  
48434 Milmont Drive  
Fremont, CA 94538

Phone:  
Mobile:

mark.salcido@atlascopco.com

Dear **Daniel Bowen**,

We appreciate your invitation to quote our service proposal, rest assured we will do our best to meet your expectations.

Service plans are specifically designed to increase compressor equipment uptime, energy savings and administration efficiency at the minimum overall costs.

With our Parts Plan the genuine parts and lubricants, which are specifically selected and tested in our laboratories and research centres for your compressor needs, are reserved in stock for you to arrive in-time.

With Preventive Maintenance package Atlas Copco will relieve you of the burden of maintenance planning and will take over the responsibility for the regular servicing of your equipment:

- o We will be happy to support your business assuring continuous in-time maintenance operation.
- o When service is due, you will be notified and a maintenance visit upon agreed time will be arranged.
- o Our service technicians are always up to date with our maintenance standards and will provide you with the best service in the market.

This proactive maintenance combined with genuine parts are proved to significantly reduce the chances of a breakdown. You are not just buying a service; you obtain a reliable partner, and we are grateful for your trust.

In case you need additional information on this quotation or other service products, please do not hesitate to contact me at any time.

Kind regards,

Kind regards,

**Mark Salcido**

*Mark Salcido*

#### Atlas Copco Compressors LLC

300 Technology Center Way  
Ste. 550  
Rock Hill, SC 29730, USA

Phone: +1 866-472-1013  
[www.atlascopco.com/service-usa](http://www.atlascopco.com/service-usa)  
[www.atlascopco.com/air-usa](http://www.atlascopco.com/air-usa)



## Service Plans Overview

	Parts Plan (PP)	Preventive Maintenance (PM)	Total Care (TW)	Total Responsibility (TR) <sup>1</sup>
<b>Parts, lubricants, and other disposables</b>				
Standard Service kits and disposables	✓	✓	✓	✓
Electrical Parts				✓
Machine Oil (when oil-change is required)	Extra	✓	✓	✓
Automated parts/lubricants ordering and shipping with priority	✓	✓	✓	✓
<b>Expert labor and machine service specialists</b>				
Scheduled Machine Inspections with detailed report and recommendations	Extra	✓	✓	✓
General Maintenance visits (travel and mileage included)	Extra	✓	✓	✓
Cooler cleaning (with air) <sup>2</sup>			Extra	✓
Automated visit scheduling with priority		✓	✓	✓
<b>Risk management</b>				
Breakdown repairs, incl. labor, mileage, and parts			✓	✓
Repair of electric motor (incl. Overhaul if needed)				✓
Repair of air compressing elements (incl. elements Overhaul if needed)				✓
24/7 365 emergency service support with highest priority				✓
Uptime Performance Care <sup>3</sup>				✓
<b>SMART services <sup>4</sup></b>				
SMARTLINK Uptime	Extra	✓	✓	✓
SMARTLINK Energy	Extra	Extra	Extra	✓
SPM		Extra	✓	✓
Diagnostic service			✓	✓

1. Certain Plans and options can be a subject to limitation for certain equipment models and working environment conditions, please verify with your Service Sales Manager of Atlas Copco Compressors. Provision of parts and elements is a subject to limitation in case of obsolescence, no stock, and no production for machines.

2. Only 1 time a year, Cooler water cleaning or extra cleaning visits are to be requested and charged separately.

3. Equipment is to be registered and active in SMARTLINK. Only Uptime Performance Care is explicitly included, limited to certain equipment units.

4. Upgrade or installation of electronic hardware including but not limited to SMARTBOX, SMART CLAMP, SPM Sensor, iRiskTronikon might be required. Please verify with your Atlas Copco contact person.

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## Best performance, sustainability, and overall cost efficiency with Service Plans



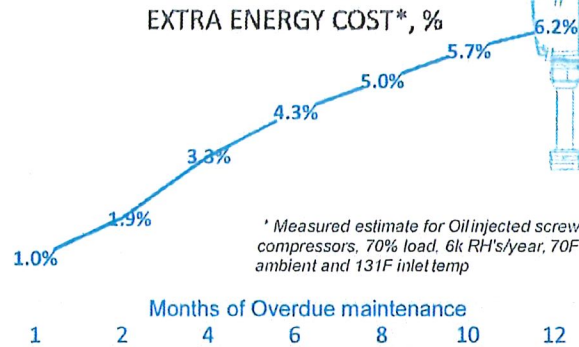
Did you know that there is a risk of more than 5 extra energy costs with poorly performed compressor equipment maintenance?

With our professional maintenance delivered on Time, you should not worry about:

- missing the schedule; or
- intricacies of specific machine service.

We help you to **save Energy** and achieve maximum performance.

**Ask for** Service Plan



### POTENTIAL DOWNTIME DECREASE\*

45,000 compressors with Service Plan are already connected to SMARTLINK



\* Based on 180,000 SMARTLINK connected machines data, calculated as % difference between days of downtime for equipment with Service Plan and without.

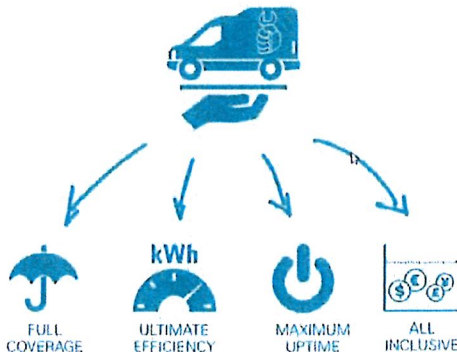


We assure maximum durability, sustainability and efficiency with parts, lubricants, and greaser, which we use for service.

For each equipment model we develop, test, and select products we use for service in our R&D laboratories.

Our Parts & Lubricants will **save your time; reduce risks and emission of CO<sub>2</sub>**.

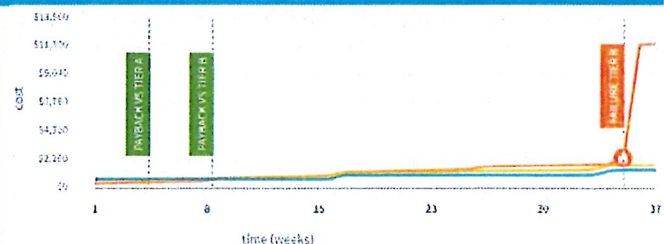
**Ask for** Parts Plan or Service Plan



Knowing how precious every hour of your production, we do everything to **decrease your cost of downtime**, because we want to be successful together.

How? Service plan is more than a maintenance. Stay on top, be automatically notified, take an action before problem occurs, overlook your compressor equipment in the palm of your hand. All of this becomes easy with our cutting-edge SMARTLINK technologies of proactive IoT machine monitoring.

**Ask for** Service Plan with SMARTLINK



Give yourself the certainty you need!

We can even **cover** some residual **risks**, including:

- Required Overhauls.
- Breakdown repairs.
- Uptime performance.

Give yourself the benefit of being able to focus on your production, while Atlas Copco takes Total Responsibility for your compressors.

**Ask for** Total Responsibility

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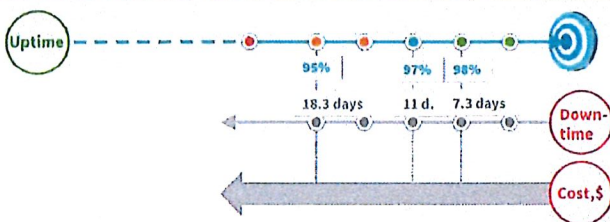
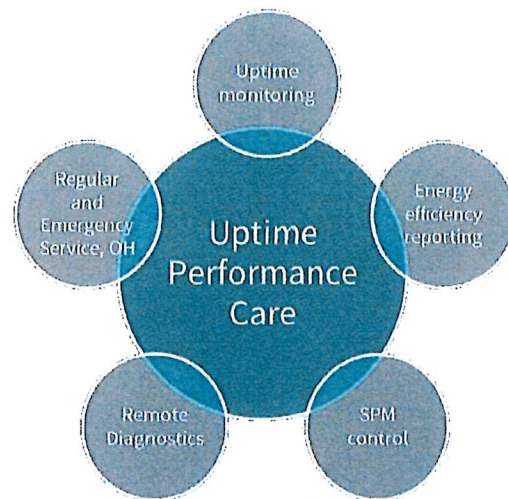




## Uptime Performance Care



With our unique premium package, we will make Availability of your compressor equipment as high as possible.



If we cannot achieve at least **97**, we will pay you back part of your yearly contract value. We are willing to take the extra mile in our Partnership because we know that your success is our success, and we believe in our products.

Knowing how precious every hour of your production, we want to do everything to **decrease your downtime**, because we want to be successful together.

LAST 30 DAYS	LAST 7 DAYS	YESTERDAY
OPTIMAL	OPTIMAL	OPTIMAL
100.00 %	100.00 %	100.00 %

UPTIME ②



**OPTIMAL** 98+  
GOOD 97-98  
LOW < 97

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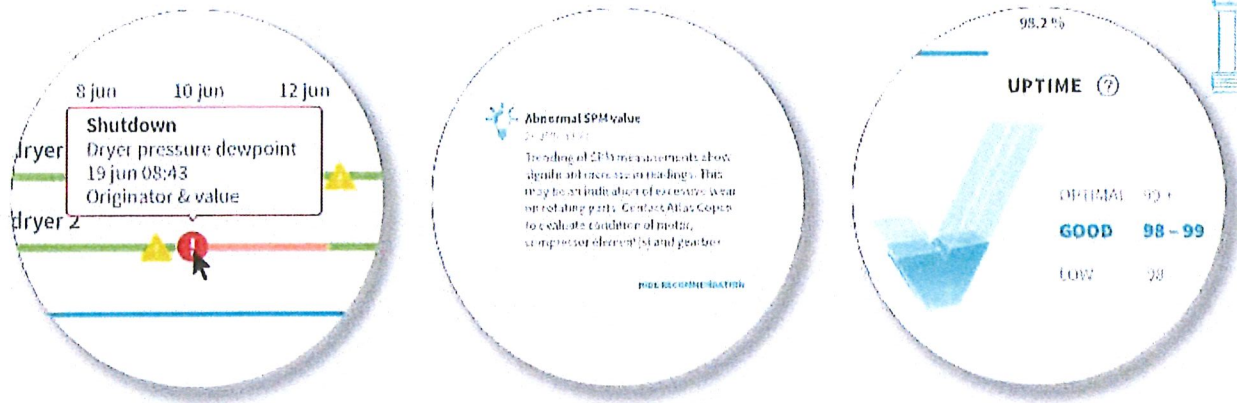
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### SMARTLINK Services

SMARTLINK gathers, compares and analyzes data from your Compressor equipment on the fly. When needed, it sends out warnings, both to our Central Command Center and to your cell phone or email, allowing us to predict and prevent potential negative events:



SMARTLINK also can provide performance and energy reports allowing you to monitor and tune your system's energy efficiency. Choose the following SMART subscriptions with your Service Plan:

High Data Modes (1 data sync/per 10 minutes, Shutdowns & warning events immediately)	Uptime License	Energy License	SPM License
Machine Overview	✓	✓	
Monthly service overview email	✓	✓	
Events (basic warnings, shutdowns, other)	✓	✓	
Customer Report (Event history, service status)	✓	✓	
Basic Health Score	✓	✓	
Notifications (SMS, email, mobile app)	✓	✓	
Uptime KPI	✓	✓	
Recommendations (Uptime)	✓	✓	
Export measurement data	✓	✓	
Recommendations (Energy)		✓	
Energy KPI		✓	
Energy overview (ISO50001)		✓	
Trend graphs		✓	
Energy Report (KPIs, trends)		✓	
SPM overview of the rotating components			✓
SPM KPI's and trend (with normalization)			✓
SPM recommendations to avoid downtime			✓
Extra: Diagnostics Service, proactive Experts' analysis and recommendations (Mk5 is required)			

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[www.atlascopco.com/air-usa](http://www.atlascopco.com/air-usa)





Quote number: 179471614  
Created on: 03/10/23

Table 1 - Pricing and Services Summary

Machine Description	Serial Number	Service Type	Planned Visits	Visits Per Year	Price Per Year
MAC.PC.001	CMA-004	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 2126.17
MAC.PC.002	CMA-005	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 2126.17
RAD.PC.001	H035A115081004	Preventive Maintenance	4X A VISITS PER YEAR	4.00	\$ 568.00
MAD.HR.002	HOP550205	Preventive Maintenance	4X I VISITS PER YEAR	4.00	\$ 568.00
VP.DM.001	SC10378536001	Preventive Maintenance	11X A VISITS PER YEAR 1 X B VISITS PER YEAR	12.00	\$ 9926.03
VP.DM.002	SC10379541004	Preventive Maintenance	11X A VISITS PER YEAR 1 X B VISITS PER YEAR	12.00	\$ 9926.03
VP.DM.003	SC10355944003	Preventive Maintenance	11X A VISITS PER YEAR 1 X B VISITS PER YEAR	12.00	\$ 9926.03
RAD.DY.001	MMG092742	Preventive Maintenance	4X I VISITS PER YEAR	4.00	\$ 568.00
MAC.DY.002	CMA-002	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 890.63

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[www.atlascopco.com/service-usa](http://www.atlascopco.com/service-usa)  
[www.atlascopco.com/air-usa](http://www.atlascopco.com/air-usa)





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Created on: 03/10/23

MAC.DY.001	M4421A	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 890.63
RAD.DM.001	2453215-044	Preventive Maintenance	4X I VISITS PER YEAR	4.00	\$ 568.00
CAC.DM.001	CA-003	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 1054.37
CAC.DM.002	CA-004	Preventive Maintenance	4X I VISITS PER YEAR	4.00	\$ 568.00
MAC.PC.002	CMA-005	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 792.30
MAC.PC.001	CMA-004	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 792.30
VP.BB.001	CV-004	Preventive Maintenance	4X I VISITS PER YEAR	4.00	\$ 568.00
VP.BB.002	CV-005	Preventive Maintenance	4X I VISITS PER YEAR	4.00	\$ 568.00
MAC.4123.002	0484A	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 927.40
MAC.4123.001	04841B	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 927.40
MAC.BC.001	CMA-003	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 792.30

#### Atlas Copco Compressors LLC

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CAC.1330.001	1128906	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 1422.66
CAC.G.001	CA-010D169276	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 2844.41
CAC.G.002	CA-011D150329	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 2798.04
MAC.HR.001	0F04827VTS-A	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 853.04
MAC.HR.002	0F04826VTS-A	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 853.04
VP.HR.001	ECV-001	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 3394.38
VP.HR.002	ECV-002	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 3394.38
WAG.HR.001	ECV-003	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 2475.04
WAG.HR.002	ECV-004	Preventive Maintenance	3X A VISITS PER YEAR 1X B VISITS PER YEAR	4.00	\$ 2475.04
CAC.RE.001	ECA-008A	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 1022.68
CAC.RE.002	ECA-008B	Preventive Maintenance	2X A VISITS PER YEAR 2X I VISITS PER YEAR	4.00	\$ 1022.68

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MAC.RD.001	CMA-008	Preventive Maintenance	4X A VISITS PER YEAR	4.00	\$ 966.80
MAC.RD.002	CMA-009	Preventive Maintenance	4X A VISITS PER YEAR	4.00	\$ 966.80

Total Price per year  
Billed Monthly in 12 equal payments  
3 year po will have a discount applied

1 year po \$69562.75  
3 year po \$63626.75

**ALL PARTS IN SERVICE PLAN WILL HAVE  
FREE FREIGHT AND NO TAX ADDED**

**ALL WORK OUTSIDE OF SERVICE PLAN  
WILL HAVE A 10% DISCOUNT ON PARTS**

Atlas Copco Compressors LLC

Initials \_\_\_\_\_  
Printed name \_\_\_\_\_  
Date \_\_\_\_\_

KERN COUNTY HOSPITAL AUTHORITY

Initials \_\_\_\_\_  
Printed name \_\_\_\_\_  
Date \_\_\_\_\_

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Quote number: 179471614  
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### Commercial Terms and Conditions of Service

1. **Quote validity:** This quote expires 30 days after generation
2. **PO/Agreement reference number:** \_\_\_\_\_ **PO expiration:** \_\_\_\_\_ (MM/DD/YYYY)
  - (a) PO renewal: Required within 30 days before PO end date.
  - (b) Agreement Start date: \_\_\_\_\_ (MM/DD/YYYY) Agreement duration: \_\_\_\_\_ years
  - (c) Agreement and PO periods cannot exceed the Durations stated per line item in the 'Service Plan(-s) pricing' table.
3. **Payment terms:** 30 days after the invoice date. Taxes not included in quoted price and will be added to invoice. Number of invoices per year: \_
4. **Price reviews:**
  - (a) Anytime when agreed yearly running hours for a machine are exceeded by 1,000h.
  - (b) Anytime there is a change in working environment or installation.
  - (c) Maximum 7% increase every 12 months or at the end of valid Purchase Order (whichever is sooner), if the new Purchase Order is provided before expiration of old purchase order. Atlas Copco will contact Customer in case a higher price growth might apply.
5. **Transportation and other costs:** Freight included.
  - (a) Forklift and/or other lifting equipment is to be provided by the customer. Additional charges will be added if not available or in scope of supply.
  - (b) Overhauls and service are performed on site, otherwise freight costs and other costs may apply.
  - (c) Extra costs if working outside normal working hours (8:00am - 5:00pm, Monday through Friday).
6. **Agreement termination with 30 days written notice.**
  - (a) Customer is entitled for a refund for any services that have not been performed but already paid for. Seller is entitled to additional payments for any services and products that were provided before the termination, but not fully paid.
7. **Service plan(-s):**
  - (a) **Inspection Plan (IP).** Atlas Copco will provide labor and travel for the agreed inspection visits and activities.
  - (b) **Parts Plan (PP).** Atlas Copco will assure timely delivery of service kits and optionally other standard parts or lubricants. If included in the quotation, Atlas Copco will perform Inspection visits.
  - (c) **Preventive Maintenance (PM).** All spare parts, consumables, labor, and travel deemed applicable by Atlas Copco to perform the activities specified in the quotation for each planned service visit will be provided.
  - (d) **Provision of parts and elements** is a subject to limitation in case of obsolescence, no stock and no production for machines. Any agreed hours of work remain subject to availability of Atlas Copco's service personnel.
8. **Customer responsibilities:**
  - (a) Keep the equipment in a clean condition, free of any corrosive contaminants and acceptable working environment. Perform general cleaning of main and supporting (e.g., cooler) equipment and parts, unless otherwise explicitly agreed in writing by Atlas Copco.
  - (b) Use only genuine Atlas Copco Parts and Lubricants approved by Atlas Copco, avoid non-authorized by Atlas Copco changes to equipment or installation.
  - (c) Take the necessary action on compressor equipment repairs recommended by Atlas Copco. Make the equipment units available for an overhaul (and pay for an overhaul unless included in the Service plan) if SPM readings or other metrics indicate the need for it.
  - (d) Perform daily and weekly inspection on the compressor equipment. Inform Atlas Copco of any changes in compressor operational conditions and changes in the equipment installation.
9. **Liability limitation.** Neither party shall be liable for any special, indirect, incidental, punitive or consequential damages, including, but not limited to, loss of total or partial use of products, downtime cost, loss of profits or revenues.

ALL OTHER TERMS ARE SPECIFIED IN THE PREVIOUSLY SIGNED SERVICE AGREEMENT OR IN ATLAS COPCO GENERAL TERMS AND CONDITIONS OF SERVICE SET FORTH BELOW. THIS DOCUMENT, ANY PART OF IT IS A SUBJECT TO NON-DISCLOSURE AND CONFIDENTIALITY DESCRIBED IN GENERAL TERMS AND CONDITIONS OF SERVICE AND IT CANNOT BE SHARED TO A THIRD PARTY WITHOUT AN EXPLICIT WRITTEN CONSENT OF ATLAS COPCO

By signing this document, you agree to Atlas Copco terms and conditions of Service, and you are authorizing Atlas Copco Compressors LLC to automatically invoice as detailed above, using the PO/agreement number stated in this document.

**Atlas Copco Compressors LLC**

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

Date \_\_\_\_\_

**KERN COUNTY HOSPITAL AUTHORITY**

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

Date \_\_\_\_\_

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**Atlas Copco General Terms and Conditions of Service**  
(Revised April 4<sup>th</sup>, 2022)

Atlas Copco Compressors LLC (a Delaware limited liability company having its principal place of business at 1800 Overview Drive, Rock Hill, South Carolina 29730, USA) is referred to herein as "Atlas Copco", and the customer or legal entity purchasing a service from Atlas Copco is referred to as the "Customer". "Services" means products, services and associated parts provided to Customer by Atlas Copco as defined in the Service Plan set out in the quotation.

These Service Terms and Conditions along with Atlas Copco's applicable quotation constitute the complete and exclusive statement and understanding of the terms of the agreement governing the supply of Services by Atlas Copco to the Customer ("Agreement"). Except where a written services agreement is expressly agreed upon by the parties, The Customer's issuance of a purchase order and/or the Customer's acceptance of any work performed by Atlas Copco shall constitute acceptance of these Service Terms and Conditions. Notwithstanding any contrary provision in the Customer's purchase order or other document, commencement of performance by Atlas Copco shall not constitute acceptance of the Customer's terms and conditions to the extent any such terms or conditions are inconsistent with or in addition to these Service Terms and Conditions. Any and all terms, conditions, and other provisions from the Customer (whether or not contained in a request for quotation, purchase order, or otherwise) which are inconsistent with or in addition to these Service Terms and Conditions are rejected and shall not be binding on Atlas Copco. No waiver, alteration, amendment, or other modification of these Service Terms and Conditions shall be binding on Atlas Copco unless made in a writing (identifying the applicable quotation number and clearly identifying and agreeing to the modification) signed by an authorized Atlas Copco manager at Atlas Copco's offices.

**1. Quotation Validity**

Unless otherwise expressly stated in the quotation, the quotation is valid for a period of 30 days after it is issued by Atlas Copco. Beyond that, quotations will require confirmation or adjustment by Atlas Copco.

**2. Terms of Payment**

Unless otherwise expressly agreed in writing by Atlas Copco, each invoice is due and payable 30 days after the invoice date. The Customer shall have no rights to any setoffs relating to any payments due under this Agreement. In the event of late payment, Atlas Copco reserves the right to charge interest at the lower of an annual rate equal to 12% or any applicable maximum statutory rate on all unpaid amounts calculated on a day-to-day basis until the actual date of payment.

**3. Price Adjustments**

a. The annual price is subject to an adjustment on completion of each twelve months from the commencement date (hereinafter referred to as the "review date"); however, the price increase at each such review date shall not exceed certain percent (agreed in "Commercial Terms and Conditions of Service") of the preceding twelve-month period's price, unless otherwise explicitly agreed in writing. It is expressly understood that this price increase limitation does not apply to Service Plans, for which price has been agreed longer than 12 months ago. For example, it is expressly understood that upon a renewal of any 3-year, 5-year or 10-years' Service Plan where price stayed the same over the whole period price rates will be adjusted to current pricing of the products or services. Price increase limitation might not be applicable in case Purchase Order is not provided before the due date. Atlas Copco will notify Customer in case a higher yearly price growth might apply.

b. Regardless of the duration of the term and even if the price is stated as a fixed annual price, the price is subject to an adjustment at any time during the term if any major change occurs in the operating or site conditions of the compressor. Major changes include but are not limited to: (i) Customer's act of moving the compressor (even if within the facility), (ii) placing another piece of equipment in such a way that coolant air inflow into the compressor is affected, or (iii) making electric power-related changes, or exceeding the compressor's estimated yearly running hours (specified in the quotation's Pricing and Services Summary, in the column entitled "Estimated Running Hours per Year") by more than one thousand (1,000) hours. In addition, the price is subject to an adjustment at any time if there is any addition of service and annually based on machine aging and wearing out.

**4. Taxes**

The price does not include taxes. Any and all applicable taxes (except any taxes on Atlas Copco's income) will be added to any price payable by the Customer.

**5. Service**

a. Services are provided in accordance with the selected Service Plan, which is described in detail in the quotation. Atlas Copco's quotation also describes the scope of products, parts and activities for each specific unit of equipment. The activities will be performed by Atlas Copco in accordance with the compressor's instruction manual or as determined by the compressor's operating context. After each visit, an electronic service report will be provided by Atlas Copco to the Customer. The service report will outline the Service provided and any repairs recommended. When requested, the service report must be signed by a Customer representative, thereby verifying the work, as specified, has been completed.

b. Atlas Copco will contact the Customer before any visit. All work will be performed during Atlas Copco's normal working hours (8:00 am to 5:00 pm, Monday through Friday excluding public holidays), unless otherwise mutually agreed in writing, or if breakdown service outside Atlas Copco's normal working hours is included in the Service Plan coverage. If Atlas Copco agrees to perform work outside of Atlas Copco's normal working hours, Atlas Copco reserves the right to charge the Customer extra in accordance with Atlas Copco's applicable rates.

**6. Limitations of Service Obligations**

a. Applicable to all Service Plans, Atlas Copco shall not be obligated to inspect, service, repair any compressor or provide any sort of compensation under this Agreement in the event of:

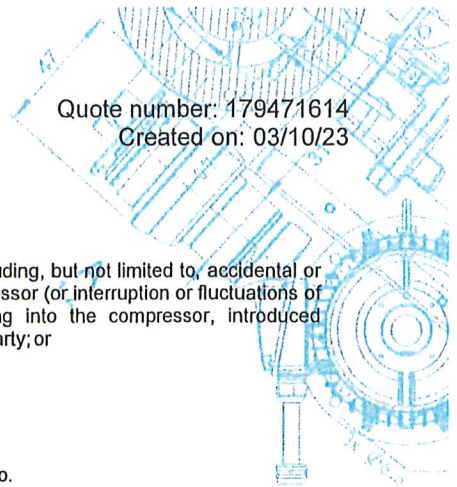
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- (v) Changes in any part of equipment and/or installation performed without authorization by Atlas Copco.







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j. If any forklift and/or other lifting or rigging equipment is necessary (as reasonably determined by Atlas Copco) for Atlas Copco to perform any activity under this Agreement, the Customer shall supply such equipment at the Customer's own cost together with sufficiently skilled and qualified labor in connection therewith.

k. Take the necessary action on compressor repairs recommended by Atlas Copco.

l. Promptly return all hardware and software (including but not limited to SMARTLINK remote monitoring products) furnished by Atlas Copco in connection with this Agreement, upon expiration/termination of the Service Plan, unless expressly agreed otherwise by Atlas Copco.

m. For Service Plans with duration longer than 1 year, before the end of each Agreement year, the Customer shall send a Purchase Order to Atlas Copco detailing the scope of agreed Services and Products for the following 12 months. In case of failure to issue a Purchase Order for the following year within 30 days before current Purchase Order Expiration, Atlas Copco reserves the right to terminate the Agreement immediately.

n. Make the compressor available for an Overhaul of the compressor's element and/or main motor if shock pulse monitoring ("SPM") readings by Atlas Copco or other metrics indicate the need for an overhaul. If the Customer fails to do this, then Atlas Copco's responsibility to provide service for the compressor under this Agreement will cease. Unless it is included in the Service Plan, Atlas Copco will quote and charge the Overhaul costs. Overhauls are generally performed on site, otherwise freight costs and other costs may apply.

o. For Service plans with extended warranty coverage, such as breakdown repair, SMARTLINK and related connectivity services must remain activated during the whole Agreement period (for equipment operated without working SMARTLINK devices other means for monitoring are to be applicable). Customer has to notify Atlas Copco immediately, when this is not possible.

#### 8. Software License

Any software and source code and all revisions thereof embedded in or otherwise associated with any service or product (whether SMARTLINK remote monitoring or otherwise) furnished by Atlas Copco (the "Software") is and shall remain the property of Atlas Copco (and/or its licensors), and in no event will title thereto be sold or transferred to the Customer. Subject to the Customer complying with all terms and conditions of this Agreement, Atlas Copco grants to the Customer a revocable, non-exclusive, non-transferable license to use, until termination or expiration of the Service Plan (whichever occurs first), the Software solely in accordance with the use intended by Atlas Copco. The Customer may not make copies, may not transfer, and may not export the Software unless expressly agreed in a written agreement signed by authorized representatives of Atlas Copco and the Customer.

#### 9. Warranty

a. Warranty on equipment and parts supplied under a separate contract will be in accordance with the warranty provisions of the equipment set forth in that contract.

b. For all other Service work, the warranty on parts is 90 days and labor 30 days from the date of site attendance. Travel costs and accommodation are not included and will be charged to the Customer at the rates ruling at the date of site attendance.

c. Repair or replacement of non-conforming parts and re-performance of labor (in a workmanlike manner) shall be the Customer's exclusive remedy with respect to the quality of or any defect in the parts or other material or associated services delivered or performed hereunder.

d. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY OR OTHERWISE, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.

#### 10. Termination

a. This Agreement (or a specific Service Plan for a specific compressor under this Agreement) may be terminated before the expiry of the term by mutual agreement in writing of the parties.

b. Either party may terminate this Agreement (or a specific Service Plan for a specific compressor under this Agreement) before the expiry of the term upon 30 days written notice of termination to the other party.

c. If an overhaul is performed during the Agreement period as a part of the Service Plan, preliminary cancellation of the Service plan agreement can only be accepted after the maintenance is compensated (general list price of the overhaul is charged).

d. The Agreement can be terminated by Atlas Copco immediately without further notification, if a new purchase order is not provided by the Customer prior to expiration of previous purchase order.

e. Atlas Copco shall at any time be entitled to terminate this Agreement, or to suspend its performance under this Agreement, with immediate effect by notice in writing to the Customer:

(i) In the event of any major change to the operating or site conditions of the compressor.

(ii) If Customer neglects to perform responsibilities set in this Agreement.

(iii) If the Customer commits any continuing or material breach of any term of this Agreement and in the case of such breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice to do so from Atlas Copco.

(iv) If the Customer goes into liquidation or makes any voluntary arrangement with its creditors or becomes subject to an administration order or an encumbrance takes possession of or a receiver is appointed over any of the property or assets of the Customer; or

(v) If the Customer ceases or threatens to cease to carry on business.

f. Upon termination, the Customer is entitled to a refund for any services that have not been performed but already paid for; Seller is entitled to compensation for any products or services that were provided under the agreement but were not fully covered by the payments.

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#### 11. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF TOTAL OR PARTIAL USE OF PRODUCTS OR FACILITIES OR SERVICES, DOWNTIME COST, LOSS OF PROFITS, AND LOSS OF REVENUE, WHETHER BASED ON CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING BUT NOT LIMITED TO STRICT LIABILITY AND NEGLIGENCE), OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE CUMULATIVE TOTAL LIABILITY OF ATLAS COPCO ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT OR ANY SERVICES FURNISHED UNDER THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE AN AMOUNT EQUAL TO THE PRICE PAID BY THE CUSTOMER TO ATLAS COPCO FOR THE SERVICE TO THE SPECIFIC COMPRESSOR(S) GIVING RISE TO THE CLAIM.

#### 12. Force Majeure

Atlas Copco shall not be liable for loss, damage, detention, or delay, nor be deemed to be in default from causes beyond its reasonable control including but not limited to acts of God, or from fire, storm, strike or other concerted action of workmen, act or omission of any governmental authority or of Purchaser, compliance with import or export regulations, insurrection or riot, embargo, quarantine, epidemic, pandemic, delays or shortages in transportation, or inability to obtain necessary engineering talent, labor, materials, or manufacturing facilities from usual sources. In the event of delay due to any such cause, the date of delivery will be postponed by such length of time as may be reasonably necessary to make up for such compensate for the delay.

#### 13. Environmental Disclaimer

The environmental management at any site on which any compressor is used is the responsibility of the Customer. Atlas Copco shall not be liable for any violation by the Customer of any environmental law or regulation, including but not limited to any law or regulation pertaining to noise, water, atmosphere, air, sewer, hazardous waste, disposal, etc.

#### 14. SMARTLINK

The equipment may include a data monitoring service called SMARTLINK. The data received by Atlas Copco may be used by Atlas Copco and certain third-party distributors and contractors for the purpose of increasing overall customer service. Atlas Copco will use commercially reasonable efforts to ensure that Purchaser's data is kept confidential. Purchaser acknowledges that the use of the SMARTLINK is provided "as is", that use of the service is entirely at Purchaser's risk, and that Atlas Copco may discontinue the SMARTLINK service at any time. Purchaser may request discontinuance of the SMARTLINK service at any time. SMARTLINK Terms and Conditions are available upon request.

#### 15. Confidentiality

Each party (as to information disclosed, the "Disclosing Party") may each disclose Confidential Information to the other party (the "Receiving Party") in connection with this order/contract/agreement and/or performance hereunder. "Confidential Information" means all information related to the business, products, or services of the Disclosing Party (including but not limited to Seller's Products/Services) that is not generally known to the public. The Receiving Party agrees: (i) to use the Confidential Information only as the Disclosing Party intended it to be used by the Receiving Party in connection with the order/contract and proper use of the Product, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties. Upon the Disclosing Party's request, the Receiving Party shall destroy or return to Disclosing Party all copies of Confidential Information. The obligations of this Section shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or affiliates, (ii) is independently developed by the Receiving Party, its representatives or affiliates, without reference to or use of the Confidential Information, (iii) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party when the source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party; or (iv) is required to be disclosed by valid legal process or law provided that the Receiving Party who intends to make such disclosure shall promptly notify the Disclosing Party prior to such disclosure and shall reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information. It is expressly agreed that this Section survives any expiration/termination of the order/contract/agreement.

#### 16. Miscellaneous

(a) Notices: Where written notices are required under this Agreement, they shall be deemed duly given when made in writing and delivered to the other party's address shown in this Agreement. Addresses may be changed by written notice to the other party. Notices shall be delivered by hand, overnight courier service or certified mail, return receipt requested. Notification will be deemed to have taken place upon delivery, if delivery is by hand, overnight courier service or 5 calendar days after posting if sent by certified mail. (b) Partial Invalidity: If any term of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part the other terms of this Agreement and the remainder of the affected term shall continue to be valid. (c) Waiver: Any waiver by Atlas Copco of a breach of any terms of this Agreement by the Customer shall not be considered as a waiver of any subsequent breach of the same term or any other term. (d) Assignment: The Customer may not assign this Agreement, or any portion thereof, without the express written consent of Atlas Copco. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon the successors and assigns of the parties hereto.

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## Pre-Work Site Assessment

**PLEASE RETURN TO YOUR ATLAS COPCO CONTACT**

Location/Customer site: \_\_\_\_\_ Date: \_\_\_\_\_

<b><u>Safety Risk Analysis</u></b>	Yes	No	N/A	Corrective Action Taken?
Is there a Fall risk (compressor on platform, no safety railing, etc.) or ladder use?				
Is the lighting adequate?				
Is there risk of touching hot parts (burn hazard)?				
Is there a danger of flying dust?				
Is there fire exposure?				
Is there a fire extinguisher in the workplace?				
What process has the vacuum pump has been used for?				
What customer permissions are needed? (LOTO, Hot-work, Confined Space, etc.)				
If required, will adequate lifting equipment be supplied by the customer?				
Are there any other hazards not listed above?				
Given the hazards, what controls, including Personal Protective Equipment, are required?				
Other comments and considerations				

<b><u>Site Specific Requirements</u></b>	Yes	No	N/A	If yes, then how many hours?
Is additional time needed to access the equipment because it's in a difficult location?				
Is the equipment located outdoors?				
If the equipment is located outdoors, then is it covered and protected?				
Is there enough clearance around the equipment to access it properly?				
Is additional time needed due to security procedures?				
Is there safety or site training required?				
Is additional time needed for the LOTO process?				

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**EXHIBIT A-1**

**IRS FORM W-9**



**EXHIBIT B**  
**FEES**



July 1, 2023

**Atlas Copco Compressors LLC  
Southern California Customer Center Labor Rates**

**Size 1 Oil flooded units and Size 1 Z units and associated dryers:**

Normal business hours: \$175.00 an hour portal to portal

Overtime: \$262.50 an hour portal to portal

Double time / Holidays: \$350.00 an hour portal to portal

**Note:**

Minimum labor charge: 4 hours

Mileage charge: \$2.00 per mile

Gas Surcharge: \$30.00

Per diem/ overnight charge: \$350.00

Regular business hours are 8am - 5pm, Monday through Friday

Special discount applies for Kern Medical Center : 10% discount on Parts for multiple  
year po

**Atlas Copco Compressors LLC**

Southern California Customer Center  
13438 Alondra Blvd  
Cerritos, CA 90703

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## **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 to the extent of Consultant's liability herein 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 to the extent of Consultant's liability herein 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 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 two (2) 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 *two (2) years* after completion of the contract work.
- 7 Documentation:
- (a) The Certificate of Insurance must include the following reference: "**Agreement for 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.
- 8 Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- 9 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.
- 10 Waiver of Subrogation: Consultant hereby grants to KCHA a waiver of any right to subrogation pursuant to the Workers' Compensation policy required herein, 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.
- 11 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 reasonable, direct 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 Agreement, shall secure and maintain insurance as described below. Contractor shall not perform any work under the Agreement 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 Agreement, 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 Agreement.

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 Agreement, 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 indemnification obligations herein.

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 Agreement, 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 to the extent caused by Contractor; loss or damage to materials or other things used or employed in performing the Work to the extent caused by Contractor; injury, sickness, disease, or death of any person engaged by Contractor in the performance of the Work; or damage to tangible personal property to the extent resulting from Contractor's negligence, but except to the extent caused by KCHA's 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 for personal injury, including death, or tangible personal property damage against Contractor to the extent caused by Contractor's negligent acts or omissions in the performance of the Work, 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 such third-party claim relating to the Agreement, 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 Agreement 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 Agreement. 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 Agreement shall not apply to any indemnified party to the extent of its 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**

September 20, 2023

**Subject:** Proposed retroactive Second Amendment to the Kern County Hospital Authority Defined Contribution Plan for Physician Employees

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

**Summary:**

The Defined Contribution Plan for Physician Employees ("Plan") was established in 1980 by the County of Kern for the purpose of providing retirement benefits to eligible physician employees. The Plan was most recently amended and restated by the Kern County Hospital Authority effective July 1, 2016.

The physician employees covered under the Plan are not eligible to participate in or receive any benefit from the Kern County Employees' Retirement Association. Funding of the Plan occurs exclusively through a combination of employer and mandatory employee contributions through payroll withholdings and earnings on such contributions. The Plan is an Internal Revenue Code 401(a) retirement plan and, as a qualified public retirement plan, the participants are exempt from participation in Social Security.

The plan is amended from time to time based on changes in regulations or other changes in the operational environment. On September 6, 2023, the Pension Committee met to discuss the changes in the operational environment, i.e., the hiring of Dr. Glenn Goldis as an employee of the Authority, and determined that it is necessary to amend the definition of "Eligible Physician" to exclude certain administrative, non-practicing physicians. Thus, the proposed amendment to exclude Dr. Goldis, in his capacity as chief medical officer, from participation in the plan. The Pension Committee unanimously approved the change, with Dr. Goldis recusing himself from the discussion and vote. As an alternative to the physicians' pension plan, Dr. Goldis will participate in the Defined Contribution Plan for Management, Mid-Management and Confidential Employees. The amendment is retroactive to August 26, 2023, Dr. Goldis' hire date.

Therefore, it is recommended that your Board retroactively approve the proposed Second Amendment to the Kern County Hospital Authority Defined Contribution Plan for Physician Employees, effective August 26, 2023, amending the definition of "Eligible Employee" to exclude the chief medical officer, and authorize the Chairman to sign.

**SECOND AMENDMENT  
TO THE  
KERN COUNTY HOSPITAL AUTHORITY  
DEFINED CONTRIBUTION PLAN FOR PHYSICIAN EMPLOYEES**

WHEREAS, the Kern County Hospital Authority (the "Authority") maintains the Kern County Hospital Authority Defined Contribution Plan for Physician Employees (the "Plan"); and

WHEREAS, the Plan was most recently restated effective July 1, 2016; and

WHEREAS, the Pension Committee has determined that it is necessary to amend the definition of "Eligible Physician" to exempt the chief medical officer, who is employed by the Hospital Authority for, or through Kern Medical Center, from participation in the Plan; and

WHEREAS, the Plan is amended effective August 26, 2023;

NOW, THEREFORE, BE IT RESOLVED that effective as of the date set forth above and incorporating by this reference the foregoing recitals, the Authority hereby amends the Plan as follows:

1. Article 3, Plan Participation, section 3.1, Eligible Physician, shall be deleted in its entirety and replaced with the following:

"3.1 Eligible Physician. "Eligible Physician" means each Physician who is employed by the Hospital Authority for, or through Kern Medical Center, but excludes any Physician who:

- (a) is employed by a department of the Hospital Authority other than Kern Medical Center; or
- (b) participates in the Kern County Employees' Retirement Association; or
- (c) is employed by the Hospital Authority as chief medical officer."

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

3. 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.

4. 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 WHEREOF, this Second Amendment to the Kern County Hospital Authority Defined Contribution Plan for Physician Employees is adopted by the Authority on this 20th day of September, 2023.

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Karen S. Barnes  
Vice President & General Counsel



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

September 20, 2023

**Subject:** Proposed Fourth Amendment to Operating Agreement of Kern Medical Surgery Center, LLC, a California Limited Liability Company

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

**Summary:**

The Operating Agreement provides that the Kern County Hospital Authority (“Authority”), a California governmental entity, in its capacity as the sole member of the Kern Medical Surgery Center, LLC (“LLC”), shall be managed by three managers (each a “Manager” and, collectively, the “Board of Managers”), appointed by the Authority as the sole member of the LLC. The proposed Fourth Amendment increases the number of managers from three to seven and appoints your Board as the managers of the LLC.

Therefore, it is recommended that your Board approve the Fourth Amendment to the Operating Agreement of Kern Medical Surgery Center, LLC, increasing the number of managers from three to seven and appointing the Board of Governors as the managers, effective October 1, 2023, and authorize the Chairman to sign.

**FOURTH AMENDMENT  
TO  
OPERATING AGREEMENT  
OF  
Kern Medical Surgery Center, LLC  
a California Limited Liability Company**

This Fourth Amendment (this “Amendment”) to the Operating Agreement of Kern Medical Surgery Center, LLC, a California limited liability company (the “Company”), dated as of August 18, 2016, amends the Operating Agreement of the Company (the “Agreement”), effective as of this 20th day of September, 2023, and is made by the Kern County Hospital Authority, a California governmental entity, in its capacity as the sole member (the “Member”) of the Company.

WHEREAS, Section 6.2 of the Agreement states that the business, property and affairs of the Company shall be managed by three (3) managers, all of whom shall be appointed by the Member; and

WHEREAS, Section 10.7 of the Agreement states the Agreement shall not be amended or modified except by a writing signed by the Member; and

WHEREAS, the Member desires to amend the Agreement as set forth herein; and

WHEREAS, the Agreement is amended effective October 1, 2023;

NOW, THEREFORE, the Member hereby amends the Agreement as follows:

1. Article VI, Management; Member Action, Section 6.2, Management by Board, shall be deleted in its entirety and replaced with the following:

“6.2 Management by Board. Pursuant to the Articles, the business, property and affairs of the Company shall be managed by seven (7) managers (each a “Manager” and, collectively, the “Board of Managers” or the “Board”), all of whom shall be appointed by the Member. The Managers shall collectively, sitting as the Board, have all of the powers and authority given to the sole manager of a California limited liability company under the Act. A Manager shall serve indefinitely until his or her resignation or death, or his or her removal or replacement by the Member, which the Member may do at any time by notice to such effect to all Managers then serving. The Member may at any time increase or decrease the authorized number of Managers by notice to such effect to all Managers then serving. By its execution of this Agreement, the Member appoints the Member’s Board of Governors as the Managers.”

2. Except as otherwise defined herein, all capitalized terms used in this Amendment have the meaning set forth 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 taken together shall constitute one and the same instrument.

5. 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 WHEREOF, the undersigned has executed this Fourth Amendment to the Agreement as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY,  
a California governmental entity

By \_\_\_\_\_  
Russell E. Bigler, Chairman  
Board of Governors

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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



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

September 20, 2023

**Subject:** Proposed Reference Laboratory Services Agreement with The Trustees of the University of Pennsylvania, as owner and operator of the Hospital of the University of Pennsylvania on behalf of its Department of Pathology and Laboratory Medicine for reference lab services in an amount not to exceed \$100,000 over the term of the agreement containing non-standard terms and conditions.

**Recommended Action:** APPROVE; AUTHORIZE CHAIRMAN TO SIGN

**Summary:**

Kern Medical is requesting your Board approve the proposed Reference Laboratory Services Agreement with The Trustees of the University of Pennsylvania, as owner and operator of the Hospital of the University of Pennsylvania on behalf of its Department of Pathology and Laboratory Medicine for reference lab services. The University of Pennsylvania provides comprehensive testing on cerebral spinal fluid for autoimmune encephalitis and the specific nerve proteins associated to the disease. Our current reference lab does not offer testing of these specific proteins, but only common viruses and bacteria associated to the disease.

Counsel cannot approve as to form due to non-standard terms which include payment for services made prior to the effectiveness of this Agreement, limitation on indemnification, limitation of liability, and auto-renewal of the one (1) year term. Attempts were made to negotiate the non-standard terms to no avail. However, due to the specialized services that the University of Pennsylvania provides, Kern Medical requests your Board's approval of the proposed Agreement with the non-standard terms.

Therefore, it is recommended that your Board approve the Reference Laboratory Services Agreement with The Trustees of the University of Pennsylvania, as owner and operator of the Hospital of the University of Pennsylvania on behalf of its Department of Pathology and Laboratory Medicine, containing non-standard terms and conditions, for reference lab services in an amount not to exceed of \$100,000, effective September 20, 2023, and authorize the Chairman to sign.

## REFERENCE LABORATORY SERVICES AGREEMENT

This Reference Laboratory Services Agreement ("Agreement") is made effective as of the date of last signature (the "Effective Date") by and between the Kern County Hospital Authority, with a place of business at 1700 Mt. Vernon Ave, Bakersfield, California 93306 ("Client") and The Trustees of the University of Pennsylvania, as owner and operator of the Hospital of the University of Pennsylvania on behalf of its Department of Pathology and Laboratory Medicine ("Laboratory"). Each of Client and Laboratory is a "Party" to this Agreement, and both referred to together shall be defined as the "Parties".

Client requires the services of a reference laboratory to perform certain clinical laboratory services that Client does not perform in the normal course of its operations. Laboratory owns and operates one or more clinical laboratories that perform clinical laboratory services for Penn Medicine patients, and certain external entities, including performing reference laboratory services to other clinical laboratories and health care providers. By conducting reference laboratory services for others, the Laboratory is advancing its non-profit missions of education and health care. Therefore, in consideration of the foregoing premises and the mutual promises set forth in this Agreement, and intending to be legally bound hereby, the Parties hereby agree as follows:

### 1. ORDERING TESTING SERVICES; SENDING SPECIMENS; AND RECEIVING RESULTS

(a) *Performance of Tests.* Laboratory will perform those clinical laboratory services referred to Laboratory by Client and included on Exhibit A to this Agreement, in accordance with any mutually-agreed upon instructions, if any, set forth on Exhibit A for such services. Laboratory will perform such services with reasonable care and in accordance with the Clinical Laboratory Improvement Amendments of 1988 (as amended to date) and its implementing regulations, applicable state laboratory licensure laws and regulations, and any other applicable federal and state laws and regulations governing the laboratory services (collectively, "Applicable Laws").

(b) *Requesting Tests.* Client shall specify each laboratory test to be performed by Laboratory on a paper or electronic requisition form provided by Laboratory to Client, or other order form acceptable to Laboratory (the "Requisition"). The Requisition shall include the information required under Applicable Laws, and Client shall provide the Requisition to Laboratory no later than the time that Laboratory receives the related specimen for testing. Client shall not request Laboratory to perform a clinical laboratory test, unless such test was ordered by the physician treating the patient whose specimen is to be tested (or other authorized person operating within the scope of authority under Applicable Laws, and in accordance with Medicare regulations or other applicable third-party payer requirements ["Authorized Ordering Provider"]).

(c) *Specimen Submission and Handling Instructions.* Client shall be responsible for preserving, packaging and arranging for the specimen to be transported to Laboratory, under arrangements mutually agreed upon by the Parties. Client shall follow such policies and procedures as required under Applicable Laws, and such other policies and procedures as the Parties may develop, if any, to assure positive identification and optimum integrity of the patient specimen from the time Client receives the specimen until Laboratory receives such specimen. Client is responsible for, and shall pay all costs in connection with, obtaining all specimens to be tested, and arranging for the delivery of such specimens to the location(s) designated by Laboratory. Unless indicated otherwise on Exhibit A, Client is solely responsible for:

- (1) collecting the specimen using supplies designated by Laboratory, and the costs to obtain such supplies;
- (2) insuring the specimen against loss or damage; and
- (3) ensuring that the environmental conditions under which the specimen is transported to Laboratory (e.g., dry ice, temperature range, etc.), and the methods of transportation or shipment used, comply with all Applicable Laws.

Unless expressly set forth otherwise on Exhibit A, Laboratory will not return any portions of specimens to Client or any third person after completing the related testing.

(d) *Laboratory Report.* Laboratory agrees to deliver the laboratory test report to Client in the manner set forth on Exhibit A. The laboratory test report will include: patient's name or identifier, date of test, test name, test result, normal values, laboratory name and address, and any other information required under Applicable Laws.

(c) **Reporting Test Results.** Client shall transcribe and report the laboratory results received from Laboratory to the physician or other Authorized Ordering Provider, in a timely and accurate manner. Client's test report shall set forth the name and address of the laboratory location where the test was performed, and any other information that may be required by Applicable Laws.

## **2. FEES**

(a) Laboratory agrees to charge, and Client agrees to pay, for all laboratory testing and other services provided under this Agreement, in the amounts set forth on Exhibit A. For any other tests or services requested that do not appear on Exhibit A, Client shall pay Laboratory its then-current list outpatient testing price.

(b) Laboratory reserves the right to increase the charge for any particular test by providing at least thirty (30) days advance written notice to Client. If Client objects to the fee increase, notwithstanding anything to the contrary herein, Client may terminate this Agreement as of the date the increased charge is to become effective, by providing written notice of termination to Laboratory prior to the effective date of the increased test charge. In response to any price increase for any particular test, Client also may elect not to send any specimen and Requisition for such particular test after the effective date of the increased charge, but maintain this Agreement in effect for other services and tests listed on Exhibit A.

(c) Unless stated otherwise on Exhibit A, Laboratory will invoice Client monthly for the testing and services provided during the previous month. For each laboratory test performed for Client, the invoice will include the patient's name or identifier for whom the service was provided, the date the service was provided, and the accession number, the CPT code, and the charge for the service.

(d) Client shall pay Laboratory the full amount due within thirty (30) days of Client's receipt of Laboratory's invoice. Laboratory will send invoices to the Client address set forth on Exhibit A.

## **3. REPORTING OF FEES**

If applicable to Client under Applicable Laws, Client will accurately report any charges made by Laboratory to Client on any cost reports submitted by Client to Medicare or Medicaid or any other federal healthcare program.

## **4. BILLING**

(a) Laboratory will directly bill Client for all tests and services requested by Client and provided hereunder, and will not bill or seek payment from any other person, payer or entity.

(b) If Client submits any claim for payment to a patient, or to a federal, state, or private third-party payer (collectively, "Third Party Payer"), for a test performed by Laboratory hereunder, Client shall use its best efforts to cause such payment claim to be accurate, comply with Applicable Laws, and comply with any applicable Third Party Payer requirements.

## **5. TERM OF AGREEMENT**

(a) This Agreement shall have an initial term of one year after the Effective Date ("Initial Term"), and shall automatically renew for additional one-year terms, unless terminated by either party as permitted under this Agreement.

(b) During the Initial Term, either Party may terminate this Agreement by delivering written notice of termination to the other Party herein, if such Party materially breaches a term of this Agreement, and fails to cure such breach within thirty (30) days after receiving notice of such breach from the non-breaching Party. After the end of the Initial Term, either Party may terminate this Agreement at any time, with or without cause, by giving the other Party thirty (30) days' prior written notice.

(d) Either Party shall have the right to terminate this Agreement by written notice to the other Party, effective immediately, without providing a right to cure, upon the other Party:

- (1) filing for bankruptcy, becoming insolvent, or making an assignment for the benefit of creditors;
- (2) having its relevant license, certification and/or accreditation revoked, suspended, or limited; or
- (3) being suspended, excluded, or debarred from participation in Medicare, Medicaid or any other federal health care program.

(e) Upon termination or expiration of this Agreement for any reason, the obligations of the Parties arising prior to such termination or expiration shall be governed by the terms set forth herein until satisfied, including, but not limited to, Client's obligation to pay Laboratory for tests and services provided prior to such termination or expiration.

#### **6. PATIENT CONFIDENTIALITY**

(a) Each Party represents to the other Party hereto that it is a Covered Entity under the Health Insurance Portability and Accountability Act and its implementing regulations (collectively, "HIPAA"), and, if Protected Health Information is exchanged in performing this Agreement, the exchange is for treatment, payment or health care operations purposes. Neither Party is operating as a Business Associate of the other Party in performing its services under this Agreement.

(b) Each Party shall keep and maintain patient, billing, and medical information and records related to the testing services performed pursuant to this Agreement, in accordance with Applicable Laws, including, but not limited to, HIPAA, and shall not use or disclose such information or records except as permitted or required by Applicable Laws.

#### **7. NON-EXCLUSIVE**

This Agreement is non-exclusive; Client may obtain laboratory services from any provider other than Laboratory, and Laboratory may perform tests and services for any person in addition to Client.

#### **8. LABORATORY NOT PARTICIPATING IN HUMAN SUBJECT RESEARCH**

By performing the testing and services set forth in this Agreement, Client and Laboratory agree and intend that Laboratory and its personnel are not conducting research, as defined by Applicable Law (including but not limited to the federal Common Rule), but are providing clinical laboratory testing to help in the diagnosis or treatment of patients or the provision of patient health care.

#### **9. LABORATORY REPRESENTATIONS**

Laboratory represents that as of the date of this Agreement and continuing so long as this Agreement shall be in effect that:

(a) the Laboratory's facilities are certified under the Clinical Laboratories Improvements Act of 1988, accredited by the College of American Pathologists, and licensed under Applicable Laws, to furnish the services required hereunder; and

(b) Laboratory is not now, nor has ever been, sanctioned, debarred, suspended or excluded from the Medicare or Medicaid program or any other Federal health care program, or under Section 306(a) or (b) of the U.S. Food, Drug and Cosmetic Act.

#### **10. CLIENT REPRESENTATIONS**

Client represents that as of the date of this Agreement and continuing so long as this Agreement shall be in effect that:

(a) Client maintains all licenses and permits required under Applicable Laws to obtain reference laboratory services from Laboratory hereunder and furnish related services; and



(b) Client is not now, nor has ever been, sanctioned, debarred, suspended or excluded from the Medicare or Medicaid program or any other Federal health care program, or under Section 306(a) or (b) of the U.S. Food, Drug and Cosmetic Act.

**11. NO INDUCEMENT FOR REFERRALS**

This Agreement is not intended to provide any remuneration in cash or in kind to induce, or in return for, the referral of any patient for a service that may be paid under a Federal healthcare program. This Agreement also is not intended to provide any remuneration in return for the purchase or ordering of, or recommending the purchase or ordering of, a laboratory test or other good, service or item that may be paid under a Federal healthcare program.

**12. CHANGE IN LAW OR REGULATION**

In the event of any action by any Third Party Payer, or any change in Applicable Laws which materially modifies, changes, amends or alters the services to be provided hereunder or the amounts that may be charged by or reimbursed to Client or Laboratory, results in a substantial risk of sanctions against either Party, or which otherwise substantially affects the rights of the Parties hereto, including, but not limited to, requiring Laboratory to use the same arrangements, bill the same charges, or accept the same payments from other health care providers, Third-Party Payers, or patients ("Change in Law"), the parties will negotiate in good faith to amend the Agreement so that, to the greatest extent possible, the Parties will be in the same position performing the Agreement as they would have been without the Change in Law, or, if that is not possible or is unacceptable to either Party, either Party may terminate this Agreement by delivering ten (10) days' prior written notice to the other Party.

**13. GOVERNING LAW**  
[Intentionally omitted]

**14. INSURANCE.**

During the term of this Agreement, each Party, at its sole cost and expense, shall maintain, or self-insure for, workers' compensation insurance in the amount required by Applicable Law, and general liability and professional liability insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, with terms sufficient to cover such Party's acts or omissions that relate to this Agreement. Each Party shall advise the other Party should any of the above described policies be terminated or cancelled before the policy's expiration date or while this Agreement remains in effect. If insurance required hereunder is on a claims-made basis, then in the event of the policy's termination or expiration, the Party whose policy is terminated or expires shall purchase tail coverage, as necessary, with coverage and limits that are equivalent to those under the insurance policy to which the tail coverage relates, and for the maximum period of time reasonably available in the marketplace.

**15. INDEPENDENT RELATIONSHIP**

None of the terms of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship between Client and Laboratory other than that of independent entities contracting with each other, and nothing herein is intended or shall be construed to establish any principal-agent, employment, partnership, joint venture, or other legal relationship.

**16. FORCE MAJEURE**

Laboratory shall not be liable for any claims or damages if such claims or damages result from or arise out of a failure or delay that is due to any act beyond the reasonable control of Laboratory, including, but not limited to, acts of God, terrorism, fire, flood, or explosion (a "Force Majeure Event"). Laboratory will notify Client promptly of any Force Majeure Event and use reasonable commercial efforts to minimize the disruption caused as a result.

**17. LIMITATION OF LIABILITY AND DAMAGES**

The liability and obligations of Laboratory, and the sole and exclusive remedy of Client, under or in connection with this Agreement and tests and services provided hereunder, shall be limited to repeating such tests or services performed or, at the sole option of Laboratory, refunding the fees in full paid with respect to such tests or services. Client must notify Laboratory in writing within sixty (60) days after discovering any alleged negligence or other problem with the test or service provided hereunder. In no event shall Laboratory be responsible for any type of damages other than direct damages, and Laboratory shall not be liable to Client or any third person for any punitive, exemplary, consequential, incidental, indirect, or special damages (including lost profits or revenue) or

type of damages other than direct damages, even if Laboratory had been advised of the possibility of such type of damages. The Parties acknowledge that the tests and services to be provided by Laboratory hereunder could not be made available under the terms provided herein, without an increase in cost, if Laboratory were required to provide any representations, warranties or guarantees in addition to, or in lieu of, those expressly set forth in this agreement, and that the limitations of liability and damages set forth in this Agreement are reasonable. Notwithstanding anything to the contrary, Laboratory's limitations of liability shall not apply to, affect, or limit: (i) any of Laboratory's duties to indemnify Customer in accordance with this agreement and/or (ii) any third party claims.

**18. MUTUAL INDEMNIFICATION.** Each Party shall defend, indemnify, and hold harmless, the other party, and their respective officers, directors, employees, agents, members, shareholders, partners, joint ventures, affiliates, successors, and assigns from and against any and all liabilities, obligations, claims, demands, suits, losses, expenses, damages, fines, judgments, settlements, and penalties, including, without limitation, costs, expenses, and attorneys' fees incident thereto, arising out of or based upon contract damages, property damage, or bodily injury (including death at any time resulting there from) to any person, including the indemnifying party's employees, affiliates, or agents, occasioned by or in connection with (1) the indemnifying party's negligent performance of (or failure to perform) the contract duties hereunder; (2) a violation of any laws or any negligent act or omission by the indemnifying party's or its affiliates, subcontractors, agents or employees during the performance of the contract duties hereunder; or (3) a breach of this Agreement by the indemnifying party or any of its affiliates, subcontractors, agents, or employees; Client shall additionally indemnify Laboratory for (4) its medical decision making directly or indirectly related to the services provided by Laboratory hereunder; (5) injury (including personal injury or death) to any person (including Client's employees) or damage to any property of any kind or nature attributed to an act or omission of Client. The aforesaid obligation of indemnity shall be construed so as to extend to all legal, defense and investigation costs, as well as all other reasonable costs, expenses and liabilities incurred by the party indemnified (including reasonable attorneys' fees), from and after the time at which the party indemnified received notification (whether verbal or written) that a claim or demand is to be made or may be made. Both parties' obligations under this Section do not extend to any liability caused by the sole negligence of the other party. This Section shall survive the termination or expiration of this Agreement.

Notwithstanding the above, Laboratory shall have the right to select and obtain representation by separate legal counsel. If Laboratory exercises such right, all costs and expenses incurred by Laboratory or such separate counsel shall be borne by Laboratory and Client shall reasonably cooperate with Laboratory and its legal representatives in the investigation and defense of any such claim or action.

**19. NON-ASSIGNABILITY**

This Agreement shall not be assigned, delegated, or transferred in whole or in part by either Party without the express written consent of the other Party, which shall not be unreasonably withheld or delayed, and any such assignment, delegation or transfer without such prior written consent shall be void. This Agreement shall inure to the benefit of, and be binding upon, Client and Laboratory and their permitted successors and assigns.

**20. NOTICES**

Any notice required to be given pursuant to the terms of this Agreement shall be in writing and addressed to the individual(s) set forth below the signature lines for each party, or such other address as a party has previously notified the other party to use. A notice shall be deemed sent and delivered upon actual receipt, or if sent via reputable commercial delivery service (e.g. FedEx, UPS, DHL) or via U.S. mail, as reflected in delivery confirmation from such service or mail.

**21. ADVERTISING AND PUBLICITY**

Neither Party shall use the name, logo or trademark of the other (or of any of the other's affiliates) in any form of promotional or advertising material, press release, sales or marketing material, or in any communication with the media, without the other party's written consent to the specific contemplated use. Either Party may terminate this Agreement and seek injunctive relief immediately if the other Party violates this section of this Agreement.

**22. AMENDMENTS AND MODIFICATIONS TO THE TESTS OR THIS AGREEMENT**

Except regarding a written notice of an increase in fees pursuant to Section 2(b) of this Agreement, this Agreement, including but not limited to Exhibit A, may not be modified except in a writing signed by authorized representatives of both Parties. Any purchase order or other document issued by Client with respect to the subject matter of this Agreement shall be subject to and governed by the terms and conditions hereof, and the terms and conditions of this Agreement shall supersede any conflicting, different or additional terms and conditions of such purchase order or other document, whether or not they would materially alter this Agreement.

**23. RECORD RETENTION; HHS ACCESS CLAUSE.**

(a) Each Party agrees to keep and maintain all records related to this Agreement as may be required by Applicable Laws, for the time periods required by Applicable Laws.

(b) If Section 1861(v)(1)(I) of the Social Security Act applies to this Agreement, then, until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, Laboratory will make available upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General, or their duly authorized representatives, a copy of this Agreement and books, documents and records as are necessary to certify the nature and extent of the costs of the services provided under this Agreement.

**24. MISCELLANEOUS ADDITIONAL TERMS**

(a) *No Intended Third Party Beneficiary.* There are no intended or implied third party beneficiaries to this Agreement.

(b) *Nondiscrimination.* Each Party shall comply with all Applicable Laws prohibiting discrimination on the basis of race, color, ancestry, religion, sex, national origin, sexual orientation, gender identity, marital status, disability, veteran status, or other status which may be protected by Applicable Law.

(c) *Headings.* The headings in this Agreement are for convenience and reference only, and are not intended to, and shall not, define, expand or limit the scope of the terms to which they relate.

(d) *Severability.* The provisions of this Agreement are severable. The invalidity or unenforceability of any term herein in any jurisdiction shall in no way affect the validity or enforceability of the other terms or provisions in that jurisdiction, or of the entire Agreement in any other jurisdiction.

(e) *Waiver.* Nothing shall constitute a waiver of a term of this Agreement, or of a breach of any term of this Agreement, unless such waiver is in writing and executed by an authorized representative of both Parties. A waiver of a term in this Agreement, or any breach of any term in this Agreement, shall not constitute a waiver of any other term in this Agreement, or any breach of any other term in this Agreement, or any subsequent breach of the same term.

(f) *Integration.* This Agreement is the final and entire agreement between Client and Laboratory on the subject matter set forth herein, and supersedes all prior or contemporaneous negotiations, understandings, or agreements, whether written or verbal, on the subject matter set forth herein.

(g) *Cooperation.* Each party shall promptly notify the other party of any investigation by a regulatory or enforcement agency that relates to the Agreement, and the outcome of such investigation. Upon request by a party, the other party shall cooperate with any such investigation by providing access to its books, records and information, at the requesting party's sole cost and expense, and the requesting party shall keep confidential any non-public information or data the other party shares in connection with such investigation.

(h) *Survival.* The terms in the following sections of this Agreement shall survive the termination or expiration of this Agreement: Sections 2, 3, 4, 5(d), 6, 8, 11, 13, 14, 17, 18, 20, 21, and 23.

(i) *Priority of Terms.* If a term contained in any exhibit or attachment to this Agreement or any document incorporated by reference is in conflict with a term set forth in the body of this Agreement, the term in this Agreement shall control in meaning and interpretation, and shall be deemed to reflect the intent and agreement of the parties on the subject matter at issue.

(j) *Compliance with Applicable Laws.* Each Party shall use its best efforts to comply with all Applicable Laws in the performance of this Agreement and its obligations hereunder.

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

**26. RECONCILIATION OF PRIOR SERVICES.** The Parties agree that they have been operating under similar terms in good faith since 2017 with the expectation that an agreement was in place but neither Party has an

executed copy of such agreement available. The Parties now wish to reconcile the previously performed services as detailed in Exhibit B, attached hereto and incorporated herein. For administrative simplicity and for the avoidance of doubt, the Parties also agree to memorialize the termination of any previously executed agreement for services of the kind and nature described herein as of the day before the Effective Date of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their names as their official acts by their respective representatives, each of whom is duly authorized to execute the same.

The Trustees of the University of Pennsylvania  
as owner and operator of the Hospital of the University of Pennsylvania  
on behalf of its Department of Pathology and Laboratory Medicine

By: 

Title: CEO

Date Signed: August 15, 2023

Address(es) for Notices:

Department of Pathology and Laboratory Medicine  
Hospital of the University of Pennsylvania  
6.049 W. Gates  
3400 Spruce Street  
Philadelphia, PA 19104  
Attn.: Director, Business Operations

with a required copy to:  
Penn Medicine Office of the General Counsel  
2929 Walnut Street, Suite 400  
Philadelphia, PA 19104-5099  
Attn.: Chief Counsel, UPHS

Kern County Hospital Authority

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

Title: Chairman of the Board of Governors

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

Address(es) for Notices:

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

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By:   
Kern County Hospital Authority



**Exhibit A to  
Reference Laboratory Services Agreement  
between The Trustees of the University of Pennsylvania and  
Kern Medical- Kern County Hospital Authority**

1. Laboratory will perform the following laboratory tests under the Agreement for the charges set forth below:

Autoimmune Encephalitis Panel, CSF-NMDA, AMPAR(GluR1), AMPAR(GluR2), GABA<sub>B</sub>, LGI1, CASPR2, and CAD65.

CPT 86255 X 7 = \$675

Total Price \$675

If the NMDA result is positive, there will be an additional charge of \$300 for titer (CPT 86256) which is reflexed.

2. Laboratory will report the results as follows:

**Fax Results to Kern Medical Laboratory Attn: Send Out Department 1-661-326-2528**

**Test Results reported within 7 days of receiving sample**

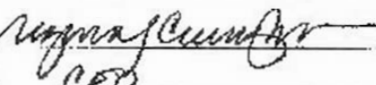
3. Address where Laboratory will send invoices/monthly statements for services rendered:

Kern Medical Laboratory  
Attn: Laboratory Manager  
1700 Mt. Vernon Ave  
Bakersfield, CA 93306

IN WITNESS WHEREOF, the Parties hereby execute this Exhibit A to the Reference Laboratory Services Agreement, as an integral part of the Agreement itself, through their respective authorized representatives.

The Trustees of the University of Pennsylvania  
as owner and operator of the Hospital of the University of Pennsylvania  
on behalf of its Department of Pathology and Laboratory Medicine

Kern County Hospital Authority

By: 

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

Title: CEO

Title: Chairman of the Board of Governors

Date Signed: August 17, 2023

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

## EXHIBIT B

The Parties have used good faith efforts to investigate and resolve previously performed services and corresponding outstanding balances that may be owed by Client to Laboratory and have agreed to the following terms:

1. Laboratory will accept the amount of \$38,838.68 (Thirty-Eight Thousand and Thirty-Eight Dollars and Sixty-Eight Cents) ("Outstanding Balance") from Client as full and final settlement of all claims it has to payment for previously performed services for Client on the condition that the aforementioned funds are paid by Client to Laboratory within forty-five (45) calendar days of the execution of this Agreement. This amount is a compromise of outstanding claims and it shall not be construed at any time or for any purpose as an admission of liability or wrongdoing by either Party, or as a concession by either Party as to the correctness or incorrectness of either Party's position concerning the matters contemplated herein.
2. The Parties acknowledge that the covenants contained in this Agreement, including this Exhibit B, provide good and sufficient consideration. Client, in consideration of the preceding, hereby fully, finally, and forever releases Laboratory and its trustees, affiliates, successors, assigns, representatives, officers, directors, employees and any other entity under the control of Client from any and all claims, demands, and causes of action of any kind, known or unknown, based in contract, tort, or other theory of recovery accrued and arising out of, based on, or relating in any way to payment of the Outstanding Balance, the services related to such Outstanding Balance, and any services performed by Laboratory for Client prior to the Effective Date of this Agreement.
3. The Parties acknowledge that they have had the benefit of advice from competent legal counsel with respect to the decision to enter into this Agreement.
4. The Parties represent that they are not breaching or interfering with any agreement, right or obligation to any person, entity, party or non-party by entering into the reconciliation of prior services described herein.
5. Disclosure of such payment of the Outstanding Balance shall be kept confidential. Disclosure shall be permitted to those legal or business consultants of a party who reasonably need to know the information in order to provide their services to such party. Disclosure shall also be permitted upon subpoena, order of a court, law, or as required by a government agency.



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

September 20, 2023

**Subject:** Proposed retroactive Application and Agreement with the Board of Administration of the Public Employees' Retirement System, acting on behalf of the State of California to extend coverage under Section 218 of the Federal Social Security Act to KCERA Members

**Recommended Action:** Approve; Adopt Resolution; Authorize Vice President, Human Resources to Sign as Authorized Agent; Direct Human Resources to Effect the Purposes of the Resolution

**Summary:**

Working with representatives from the State Social Security Administrator Program (SSSA) (the designated agent of the federal Social Security Administration) that governs social security and Medicare coverage for state and local government employees, the Authority conducted an election under Section 218 of the Social Security Act.

The election was required to continue the current practice of enabling eligible Authority employees to participate in the federal social security program. Currently, employees who work for Kern Medical Center and participate in KCERA receive their KCERA pension as well as social security benefits upon retirement or a finding of permanent disability. In order for this to continue, the SSSA required that we conduct an election to document and formalize this practice.

By way of history, in 1957 the employees of the County of Kern decided, through a Section 218 election, to have social security deducted from their paychecks to supplement their KCERA retirement benefits. Although this election covered Kern Medical Center employees while the hospital was a department of the County, the SSSA determined the 1957 election did not apply to Kern Medical Center employees upon transfer of the hospital by the County to the Authority on July 1, 2016, and that employees would need to vote or elect to maintain their eligibility in social security. This election was the first step in the process to ensure employees who participate in KCERA continue to receive social security benefits.

On November 13, 2019, your Board adopted a resolution authorizing the Authority to hold a Section 218 election to provide for continued participation of eligible Kern Medical Center employees in the social security program. The election was delayed due to the pandemic.

The election was held on August 17, 2023. A simple majority of "yes" votes by eligible employees was required to continue contributions to social security. At the time of the election, there were 1,689 employees eligible to vote with 844 "yes" votes needed for employees to continue to participate in the program. The election yielded 1,100 eligible "yes" votes in total.

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

1700 Mount Vernon Avenue | Bakersfield, CA 93306 | (661) 326-2000 | [KernMedical.com](http://KernMedical.com)

The next step in this process is your Board's approval of the proposed Application and Agreement with the Board of Administration of the Public Employees' Retirement System, acting on behalf of the State of California. Approval of the Application and Agreement will extend social security benefits under Section 218 of the Federal Social Security Act to KCERA members. Management, mid-management, and confidential (MMC) employees who participate in the defined contribution plan for MMC employees are not affected by the election, as they are already eligible for social security benefits.

The Agreement is retroactive to July 1, 2016, the effective date of the transfer of Kern Medical Center by the County of Kern to Kern County Hospital Authority.

Therefore, it is recommended that your Board retroactively approve the Application and Agreement with the Board of Administration of the Public Employees' Retirement System, acting on behalf of the State of California to extend coverage under Section 218 of the Federal Social Security Act to KCERA members, effective July 1, 2016, in an amount to be determined by the State, adopt the resolution, authorize the Vice President, Human Resources as the Authorized Agent to sign the Application and Agreement, and direct Human Resources to effect the purposes of the resolution.



Official State Social Security Administrator  
California Public Employees' Retirement System

P.O. Box 720720, Sacramento, CA 94229-0720 | Phone: (916) 795-0810 | Fax: (916) 795-3005  
**888 CalPERS** (or **888-225-7377**) | TTY: (877) 249-7442 | [www.calpers.ca.gov/sssa](http://www.calpers.ca.gov/sssa)

August 25, 2023

CalPERS ID No.: 3888498078

Lisa Hockersmith  
Vice President Human Resources  
Kern County Hospital Authority  
1700 Mount Vernon Ave  
Bakersfield, CA 93306

Dear Lisa Hockersmith,

Thank you submitting the Social Security majority vote election ballots and certification.

The next step is the adoption of the Resolution authorizing execution of the Application and Agreement for Social Security coverage for employees of the Kern County Hospital Authority who are members of the Kern County Employees' Retirement Association. We have enclosed a partially completed Resolution, and Application and Agreement. The forms contain the terms of coverage indicated in the Resolution adopted by the Kern County Hospital Authority Board of Governors of the Kern County Hospital Authority. Lisa Hockersmith, as Authorized Agent, should sign all copies of the enclosed Application and Agreement. The original and one copy of the adopted certified Resolution and the original and one copy of the signed Application and Agreement should be returned to this office.

Upon receipt of the above, we will request the Federal Government to include the Kern County Hospital Authority in the Social Security program.

These documents should not be modified in any way, as only the content included in the documents provided by this office will be accepted.

If you have any questions regarding the enclosed information, call us at (916) 795-0810.

Sincerely,

Heather Porter  
State Social Security Administrator Program

Enclosures



**RESOLUTION NO. 2023-009**  
(To Accompany Application and Agreement)

WHEREAS, a majority of the eligible employees of the Kern County Hospital Authority, hereinafter referred to as "Public Agency", who are members of and in positions covered by the Kern County Employees' Retirement Association; at a majority vote election conducted in accordance with the provisions of Part 4, Division 5, of Title 2 of the California Government Code, Section 218 of the Federal Social Security Act, and regulations promulgated by the Board of Administration of the California Public Employees' Retirement System, hereinafter referred to as "State," voted in favor of coverage under the provisions of the Old-Age, Survivors, Disability and Health Insurance system established by the Federal Social Security Act; and

WHEREAS, the Public Agency desires to file an application with the State and to enter into an agreement with the State to extend to such retirement system members and to other eligible employees of the Public Agency in the same coverage group, as defined in Section 218(d)(4) of the Federal Social Security Act, coverage under the said insurance system on behalf of the Public Agency; and

WHEREAS, official form "Application and Agreement" containing the terms and conditions under which the State will affect such inclusion has been examined by this body;

NOW, THEREFORE, BE IT RESOLVED, that said Application and Agreement on said official form be executed on behalf of the Public Agency and submitted to the State to provide coverage under the California State Social Security Agreement of March 9, 1951, of all services performed by individuals as employees of the Public Agency as members of a coverage group (as defined in Section 218(d)(4) of the Social Security Act) of the Kern County Employees' Retirement Association, except the following:

1. All services excluded from coverage under the agreement by Section 218 of the Social Security Act; and
2. Services excluded by option of the Applicant as indicated in Resolution No. 2019-016 adopted at a meeting of the Kern County Hospital Authority on November 13, 2019:  
elective positions, part-time positions.

Effective date of coverage of services under said agreement to be July 1, 2016; and

BE IT FURTHER RESOLVED, that Lisa Hockersmith, Vice President Human Resources, 1700 Mount Vernon Avenue, Bakersfield, California 93306, is hereby authorized and directed to execute said Application and Agreement on behalf of and as Authorized Agent of the Public Agency and to forward same to the State for acceptance and further action; and

BE IT FURTHER RESOLVED, that authority hereafter to act as Authorized Agent, and so to conduct all negotiations, conclude all arrangements, submit all reports, and sign all agreements and instruments which may be necessary to carry out the letter and intent of the aforesaid application and agreement, in conformity with all applicable Federal and State laws, rules and regulations, is vested in the position of Vice President Human Resources.

Kern County Hospital Authority

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Presiding Officer

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Vice President Human Resources

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Date

## CERTIFICATION

I, Scott Thygerson, Chief Executive Officer of the Kern County Hospital Authority, State of California, do hereby certify the foregoing to be a full, true, and correct copy of Resolution No. **2023-009** adopted by the Kern County Hospital Authority Board of Governors of the Kern County Hospital Authority at the regular meeting held on the 20th day of September, 2023, as the same appears of record in my office.

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Signature

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Title

---

Date

## **APPLICATION AND AGREEMENT**

For the purposes of this application and agreement, any reference made herein to any State or Federal statute or statutes, or regulations, or part thereof, applies to all amendments thereto now or hereafter made.

For the purposes of this application and agreement, "Federal System" means Old-Age, Survivors, and Disability and Health Insurance system established by the Federal Social Security Act, "Federal agency" means the Commissioner of Social Security, or successor in function to such officer, "Board" means the Board of Administration of the Public Employees' Retirement System, acting on behalf of the State of California.

The Kern County Hospital Authority, a public agency as defined in Section 22009 of the Government Code\* hereinafter called Applicant, hereby makes application to the Board to execute a modification to the California State Social Security Agreement extending thereunder the Federal System to all services performed by individuals as employees of the Applicant in a coverage group as defined in Section 218(d)(4) of the Social Security Act\* of the Kern County Employees' Retirement Association, a deemed retirement system except the following:

1. Those services mandatorily excluded from said agreement by Section 218 of the Social Security Act. \*
2. The following services excluded by option of the Applicant pursuant to Resolution No. 2019-016, adopted on November 13, 2019:

elective positions, part-time positions

\*See Attachment

In order to carry into effect, the common governmental duties under such statutes and in consideration of the mutual promises hereinafter made, the Applicant and the Board agree as follows:



1. The Board will execute a modification to the California State Social Security Agreement to extend thereunder the Federal System to the services of employees of Applicant as hereinbefore applied for.
2. Applicant will comply promptly and completely, throughout the term of this application and agreement, with the letter and intent of all statutes of the State of California, and Section 218 of the Federal Social Security Act, and applicable Federal and State regulations adopted pursuant thereto.
3. Applicant shall pay to the Federal Government amounts equivalent to the sum of taxes (employer-employee contributions) imposed under the Federal Insurance Contributions Act if the services of employees covered by the application and agreement constituted employment as defined in such Act. Applicant shall keep or cause to be kept accurate records of all remuneration for such services, said records to be maintained as required by Federal or State regulations, and said records shall be available for inspection or audit by the Board or its designated representative.
4. Applicant will prepare and submit such wage reports as may be required.

5. Applicant shall pay and reimburse the State at such times as may be determined by the State:
  - (a) Any sums of money that the State may be obligated to pay or forfeit to the Federal Government by reason of any failure of the Applicant, for any cause or reason, to pay the contributions, penalties, or interest required by the agreement between the Federal agency and the State at such time or in such amounts as required by the said agreement and any State or Federal regulations adopted pursuant thereto.
  - (b) In such amounts, as may be determined by the State, its proportionate share of any and all costs incurred by the State in the administration of the Federal System as it affects the Applicant and its employees.
  - (c) In such amounts, as may be determined by the State, the cost of any and all work and services relating to the election for the purposes of coverage under the Federal System held with respect to the coverage group for which coverage under the Federal System is requested herein.
  - (d) In such amounts, as may be determined by the State, the costs of any audits of the books and records of the Applicant made by the State or its designated representatives pursuant to Section 22559 of the Government Code.
6. The coverage herein provided for shall be effective July 1, 2016.
7. That, subject to the aforesaid provisions and applicable law, this application and agreement may be amended by the mutual consent of the parties in writing.

8. After the filing of this application and agreement, its acceptance and execution by the State shall constitute it a binding agreement between the Applicant and the State of California with respect to the matters herein set forth.

Kern County Hospital Authority

Signed by:

\_\_\_\_\_  
Authorized Agent

And by:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

ACCEPTED: \_\_\_\_\_

STATE OF CALIFORNIA  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_

Heather Porter  
State Social Security Administrator  
State Social Security Administrator Program

## ATTACHMENT

Section 22009, Government Code:

"Public Agency" means the State, any city, county, city and county, district, municipal or public corporation or any instrumentality thereof, or boards and committees established under Chapter 10 of Division 6 of the Agricultural Code, Chapter 754 of Statutes of 1933, as amended, or Chapter 307 of the Statutes of 1935, as amended, the employees of which constitute one or more coverage groups or retirement system coverage groups.

Section 218(d)(4):

For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group:

- (A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);
- (B) all employees in positions which became covered by such system at any time after such date; and
- (C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this title has not been extended before such date because the positions were covered by such retirement system - including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B).

The following services are mandatorily excluded:

- (a) service performed in a policeman's or fireman's position, covered by a retirement system at the time coverage is extended to the Public Agency;
- (b) service performed by an individual who is employed to relieve him from unemployment;
- (c) service performed in a hospital, home, or other institution by a patient or inmate thereof;
- (d) covered transportation service (as defined in Section 210(k) of the Social Security Act, as amended);

- (e) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of Section 210(a) of the Social Security Act, other than paragraph 7 of such section, or service the remuneration for which is excluded from wages by paragraph (2) of Section 209(h);
- (f) service performed by an individual as an employee on a temporary basis in case of fire, storm, snow, earthquake, or similar emergency;
- (g) services performed by election officials or election workers for each calendar year in which the remuneration paid for such service is less than the threshold amount mandated by law.





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

September 20, 2023

**Subject:** Proposed Amendment No. 1 to Agreement 75622 with Ishaan S. Kalha, M.D., a contract employee, for professional medical and administrative services in the Department of Medicine

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

**Summary:**

Kern Medical requests your Board approve an Amendment No. 1 to the Agreement for Professional Services with Ishaan S. Kalha, M.D., for professional medical and administrative services in the Department of Medicine. Dr. Kalha, a board-certified gastroenterologist and Chief, Division of Gastroenterology, has been employed by Kern Medical since February 16, 2008.

The proposed Amendment increases Dr. Kalha's rates for excess call coverage to fair market value. Call rates for call coverage in excess of 1:4 will be as follows: \$500 per 24-hour weekday call (Monday-Thursday) and \$2,000 per weekend (Friday-Sunday). This results in an increase in the maximum payable of \$200,000 over the remainder of the contract term.

Therefore, it is recommended that your Board approve the Amendment No. 1 to Agreement 75622 with Ishaan S. Kalha, M.D., for professional medical and administrative services in the Department of Medicine for the period December 10, 2022 through December 9, 2025, increasing the rates for excess call coverage, increasing the maximum payable by \$200,000, from \$1,500,000 to \$1,700,000, and authorize the Chairman to sign.

**AMENDMENT NO. 1  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Ishaan S. Kalha, M.D.)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Ishaan S. Kalha, M.D. (“Physician”).

**RECITALS**

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #75622) (the “Agreement”), whereby Physician provides professional medical services in the Department of Medicine 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;

(c) The Agreement is amended effective September 20, 2023;

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 5.2, Call Coverage, shall be deleted in its entirety and replaced with the following:

“5.2 Call Coverage. Authority shall pay Physician for call coverage as follows: (i) Physician shall be paid a fixed fee in the amount of \$500 per twenty-four (24) hour day for weekday<sup>2</sup> call coverage that exceeds one in four (1:4) weekdays; and (ii) Physician shall be paid a fixed fee in the amount of \$2,000 per weekend for weekend<sup>3</sup> call coverage that exceeds one in four (1:4) weekends.”

2. Section 5, Compensation Package, paragraph 5.4, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“5.4 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,700,000 over the three (3) year Term of this Agreement.”

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<sup>2</sup> For purposes of weekday call coverage, a “weekday” is defined as Monday through Thursday or, in the event of a holiday, Tuesday through Thursday.

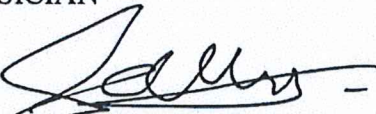
<sup>3</sup> For purposes of call coverage, a “weekend” is defined as Friday through Sunday or, in the event of a holiday, Friday through Monday.

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 shall remain in full force and effect.

[INTENTIONALLY LEFT BLANK]

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


PHYSICIAN

By   
Ishaan S. Kalha, 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.Kalha.082323



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

September 20, 2023

**Subject:** Proposed Amendment No. 1 to Agreement 103-2022 with Jack C. Hou, M.D., a contract employee, for professional medical services in the Department of Surgery

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

**Summary:**

Kern Medical requests your Board approve the Amendment No. 1 to the Agreement for Professional Services with Jack C. Hou, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Hou has been employed by Kern Medical since September 22, 2022.

The proposed Amendment extends the term of the Agreement for one year from September 22, 2023 through September 21, 2024, and increases the maximum payable by \$890,000, from \$890,000 to \$1,780,000, to cover the term. There are no other changes to the Agreement.

Therefore, it is recommended that your Board approve Amendment No. 1 to Agreement 103-2022 with Jack C. Hou, M.D., for professional medical services in the Department of Surgery for the period September 22, 2022 through September 21, 2023, extending the term for one year from September 22, 2023 through September 21, 2024, increasing the maximum payable by \$890,000, from \$890,000 to \$1,780,000, and authorize the Chairman to sign.



**AMENDMENT NO. 1  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Jack C. Hou, M.D.)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this 20th day of September, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Jack C. Hou, M.D. (“Physician”).

**RECITALS**

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #103-2022, dated September 21, 2022) (the “Agreement”), for the period September 22, 2022 through September 21, 2023, whereby Physician provides professional medical services in the Department of Surgery 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;

(c) The Agreement is amended effective September 22, 2023;

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

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

“1. **Term.** The term of this Agreement shall commence as of September 22, 2022 (the “Commencement Date”), and shall end September 21, 2024 (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, and “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.”

2. Section 5, Compensation Package, paragraph 5.6, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“5.6 **Maximum Payable.** The maximum compensation payable under this Agreement shall not exceed \$1,780,000 over the Term of this Agreement.”

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 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 \_\_\_\_\_  
Jack C. Hou, 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.Hou.091223



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

September 20, 2023

**Subject:** Proposed retroactive acceptance of donation of travel and related expenses from Oracle Health for Oracle Health CloudWorld Conference

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

The Authority's conflict of interest policy prohibits employees from receiving or accepting money or any other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course of his or her employment.

Oracle Health is the provider of the Cerner Millennium electronic health record utilized Kern Medical Center and its outpatient clinics. The Authority has been selected by Oracle Health to send one Authority employee to speak at the Oracle Health CloudWorld Conference on its experience with the Cerner Millennium electronic health record. Oracle Health has offered to donate to the Authority travel and related expenses (conference fee only) for one Authority employee to attend the Oracle Health CloudWorld Conference in Las Vegas, Nevada, from September 18-21, 2023. This training session is necessary in connection with official Authority business.

Kern Medical recommends your Board retroactively adopt the attached proposed resolution to accept the travel donation from Oracle Health for travel and related expenses (conference fees only) 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. 2023-\_\_\_\_

**ACCEPTANCE OF DONATION OF TRAVEL  
AND RELATED EXPENSES FROM ORACLE  
HEALTH FOR THE ORACLE HEALTH  
CLOUDWORLD CONFERENCE**

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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 20th day of September, 2023, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

**MONA A. ALLEN**  
Authority Board Coordinator  
Kern County Hospital Authority

---

Mona A. Allen

---

**RESOLUTION**

Section 1. WHEREAS:

(a) The 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) Oracle Health is the provider of the Cerner Millennium electronic health record utilized Kern Medical Center and its outpatient clinics; and

(c) The Authority has been selected by Oracle Health to send one Authority employee to speak at the Oracle Health CloudWorld Conference on its experience with the Cerner Millennium electronic health record; and

(d) Oracle Health has offered to donate to the Authority travel and related expenses (conference fee only) for one Authority employee to attend the Oracle Health CloudWorld Conference in Las Vegas, Nevada, from September 18-21, 2023; and

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

(f) The Authority desires to obtain the donation of travel and related expenses from Oracle Health to the Authority and will retain full control over the use of the donation; and

(g) 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 Oracle Health the donation of travel and related expenses (conference fee only) for one Authority employee to travel to Las Vegas, Nevada, to attend the Oracle Health CloudWorld Conference from September 18-21, 2023.

3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend the Oracle Health CloudWorld Conference in Las Vegas, Nevada, from September 18-21, 2023.

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**

September 20, 2023

**Subject:** Kern County Hospital Authority Chief Financial Officer Report – July 2023

**Recommended Action:** Receive and File

**Summary:**

**Kern Medical Operations:**

Kern Medical key performance indicators:

- Operating gain of \$19,862 for July is \$6,140 more than the July budget of \$13,722 and \$134,379 less than the \$154,241 average over the last three months
- EBIDA of \$1,338,235 for July is \$221,144 more than the July budget of \$1,117,091 and \$404,428 less than the \$1,742,663 average over the last three months
- Average Daily Census of 160 for July is 27 less than the July budget of 187 and 3 more than the 157 average over the last three months
- Admissions of 712 for July are 111 less than the July budget of 823 and 43 less than the 755 average over the last three months
- Total Surgeries of 448 for July are 12 less than the July budget of 460 and 58 less than the 506 average over the last three months
- Clinic Visits of 15,568 for July are 847 less than the July budget of 16,415 and 1,731 less than the 17,299 average over the last three months. The total includes 21 COVID-19 vaccination visits

**The following items have budget variances for the month of July 2023:**

**Patient Revenue:**

For gross patient revenue, there is a 1.5% favorable budget variance for the month. 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 due to the recognition of additional Quality Improvement Program (QIP) funding. The favorable change in estimate is based on achieving 100% of the designated quality goals per the current performance report for this program.

**Other Operating Revenue:**

Kern Medical operated under budget for other operating revenue for the month. Items such as medical education funding, grants, and Proposition 56 funding are received quarterly or otherwise periodically. Therefore, actual monthly revenue compared to the budget will fluctuate throughout the year.

**Other Non-Operating Revenue:**

Other non-operating revenue has a favorable budget variance for the month due to the receipt of \$64 thousand of COVID-19 employee retention funds in July. The COVID-19 retention bonuses were paid out to employees in July 2023 and included in salaries expense.

**Nurse Registry Expense:**

Nurse registry expense is under budget for the month. 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 nurse shortages during the pandemic. Kern Medical plans to continue its need for registry services as appropriate to staff for patient needs.

**Medical Fees:**

Medical fees are over budget for the month because of higher than average monthly fees for Regional Anesthesia Associates.

**Other Professional Fees:**

Other professional fees are over budget for the month primarily because of higher than average legal expenses for the month and because the accrual for legal fees was too low in prior months.

**Supplies Expense:**

Supplies expense is under budget for the month due to lower-than-average costs for pharmaceuticals and for general medical supplies.

**Purchased Services:**

Purchased services are over budget for the month primarily because of higher than average out-of-network costs for health care services provided by outside providers for Kern Medical patients and because of an under accrual for this line item in the prior month.

**Other Expenses:**

Kern Medical operated at the budgeted dollar amount for other expenses during the month of July.

**Interest Expense:**

Interest expense is over budget due to higher than anticipated certificate of participation (COP) bond 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.

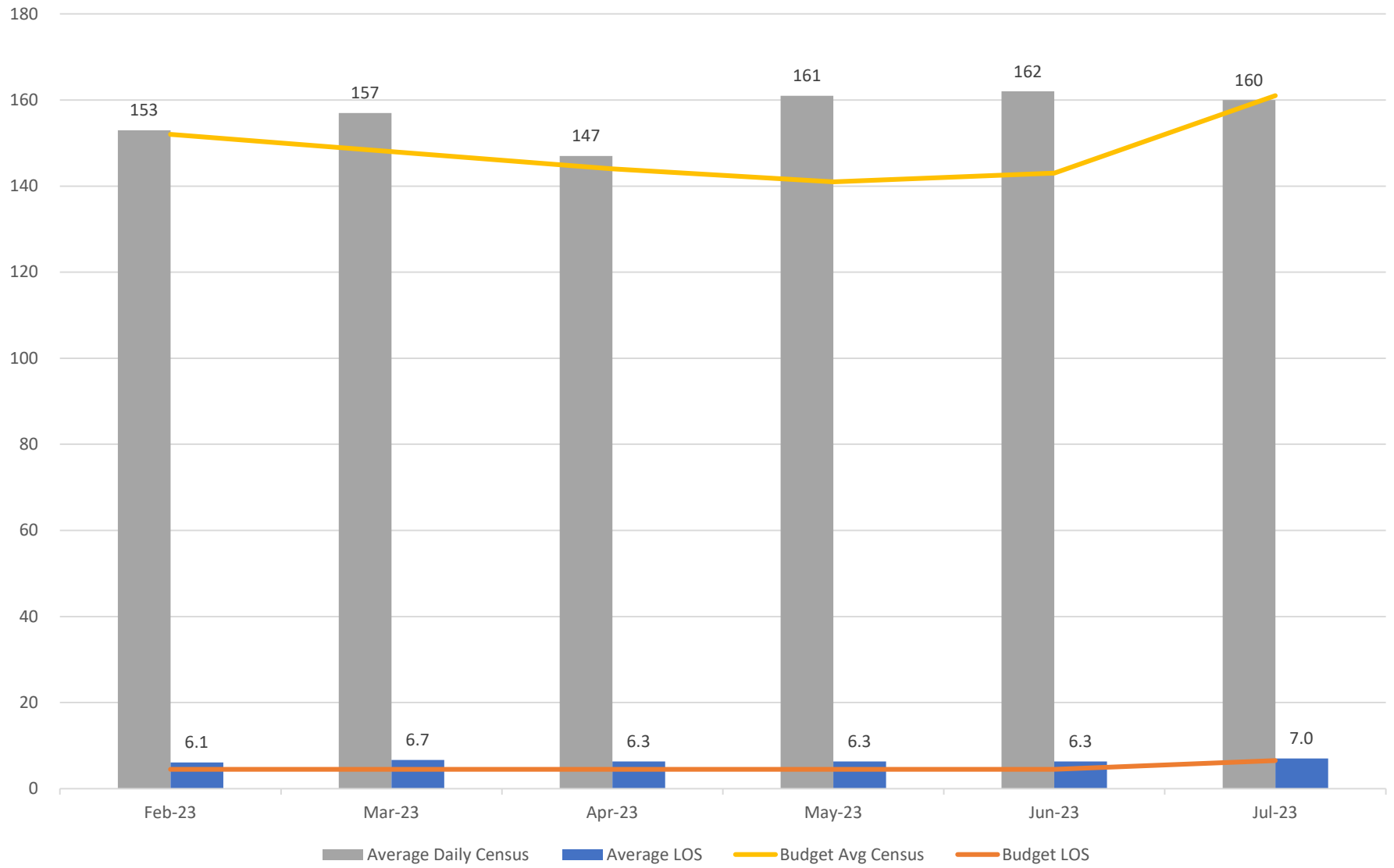
**Depreciation and Amortization Expense:**

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.

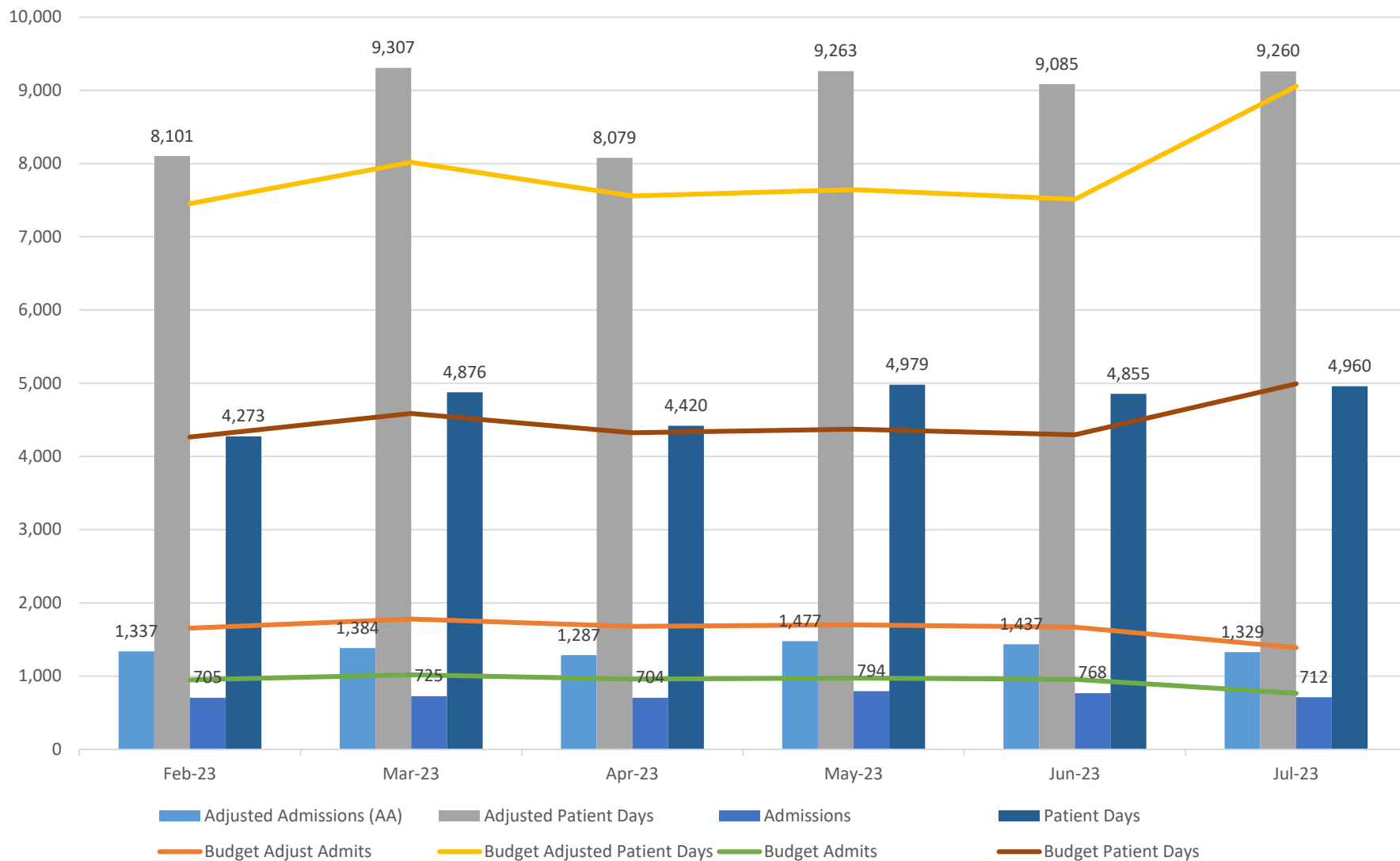


## **BOARD OF GOVERNORS' REPORT KERN MEDICAL – JULY 2023**

## Census & ALOS

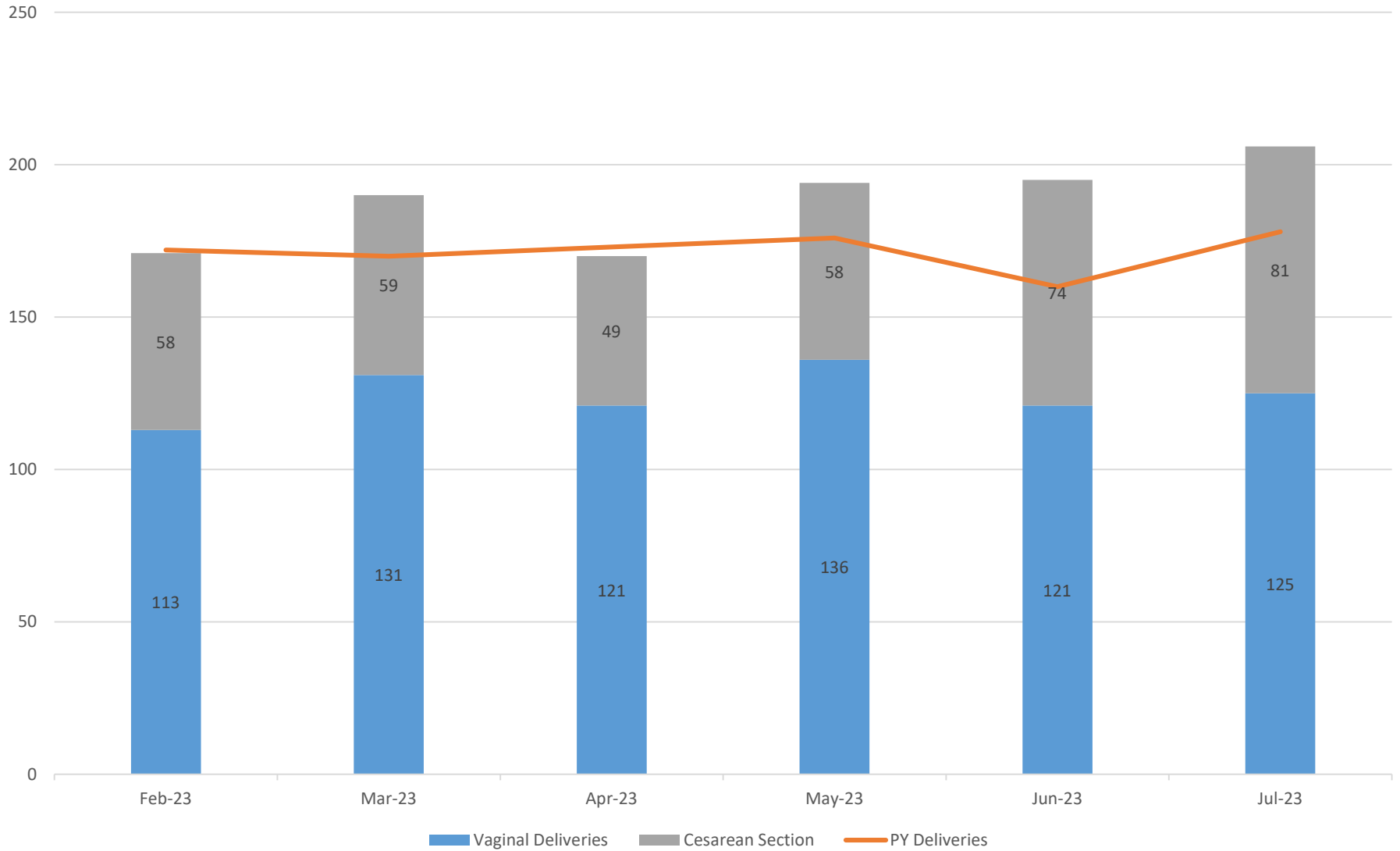


## Hospital Volumes

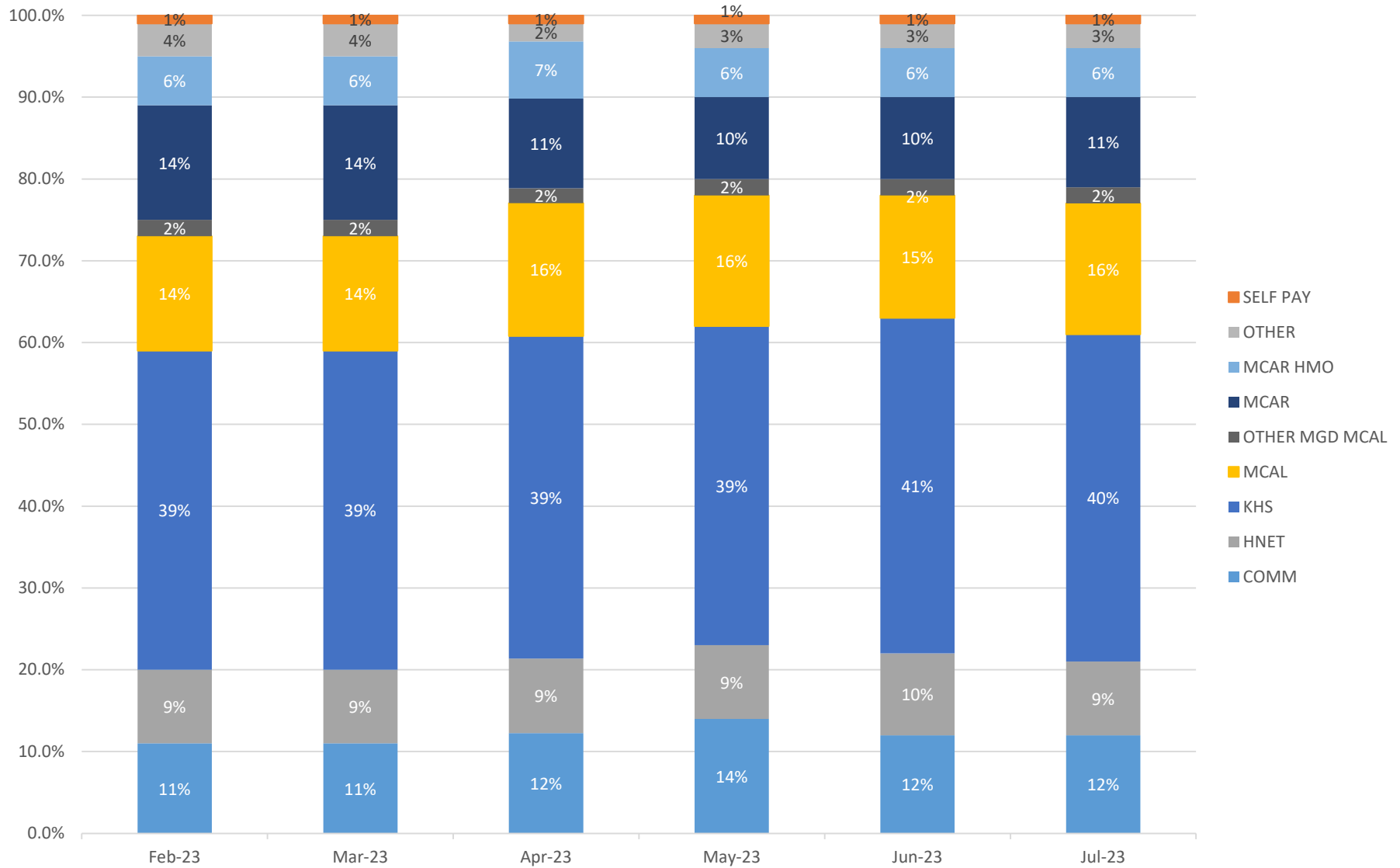




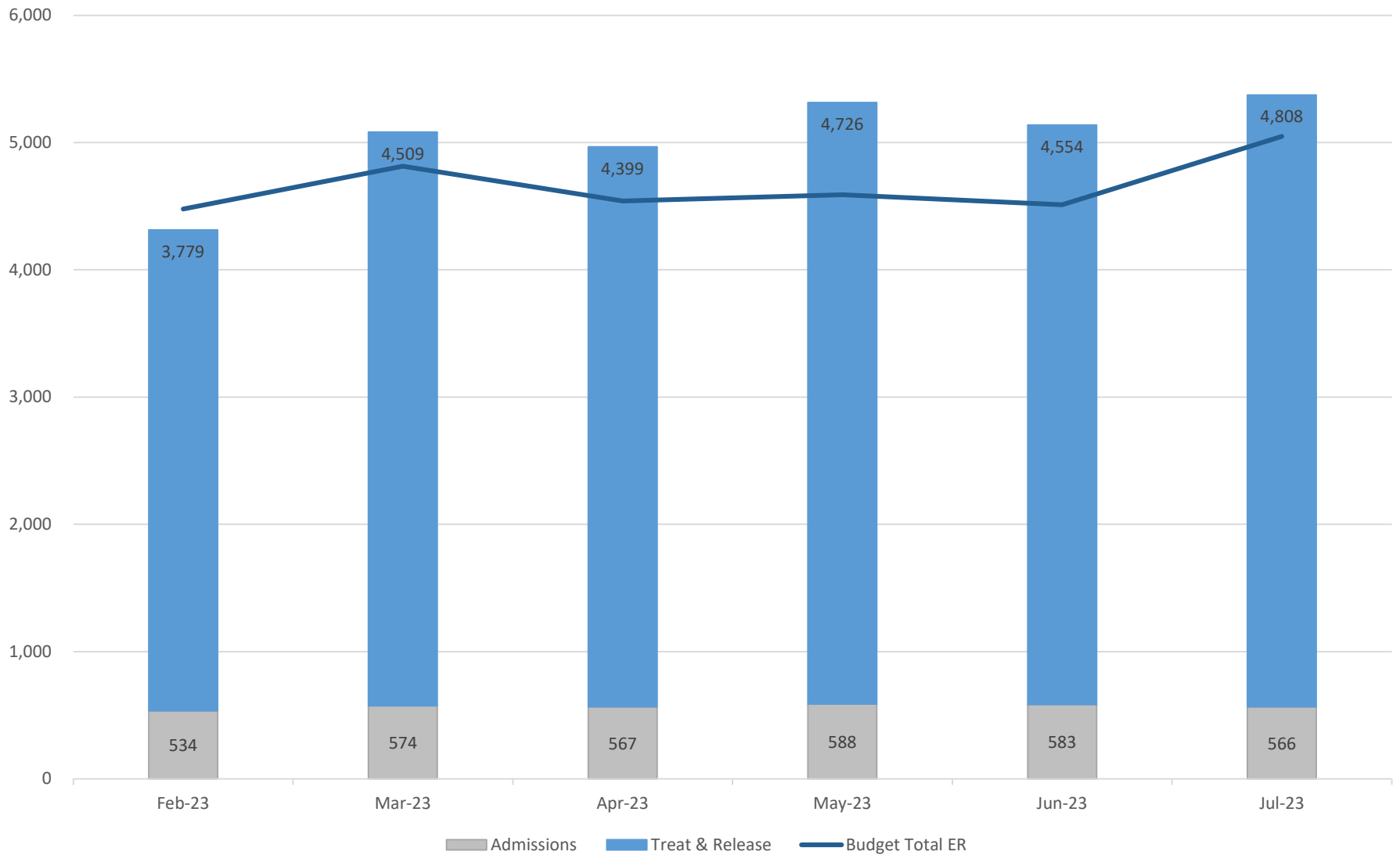
## Deliveries



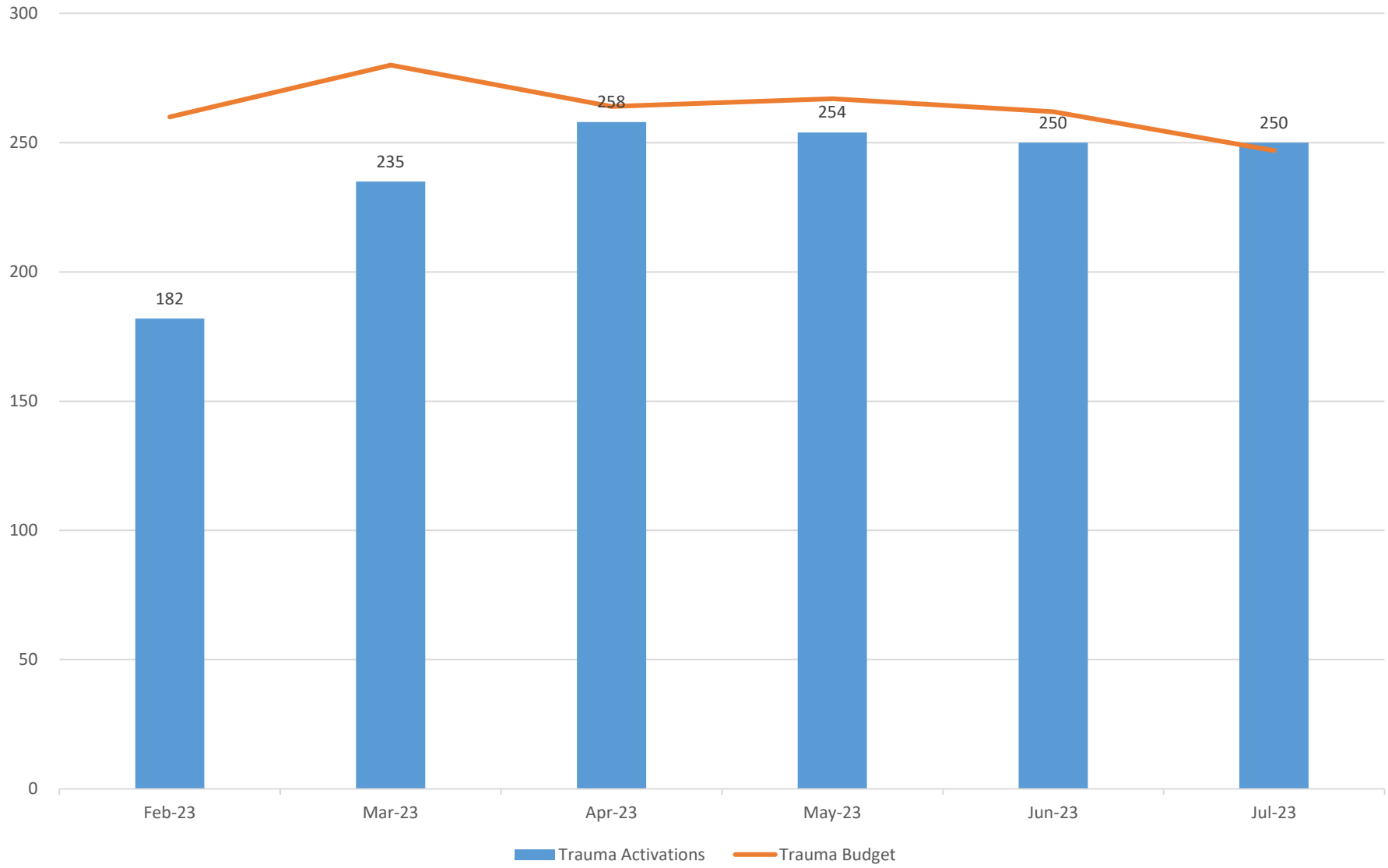
## PAYER MIX



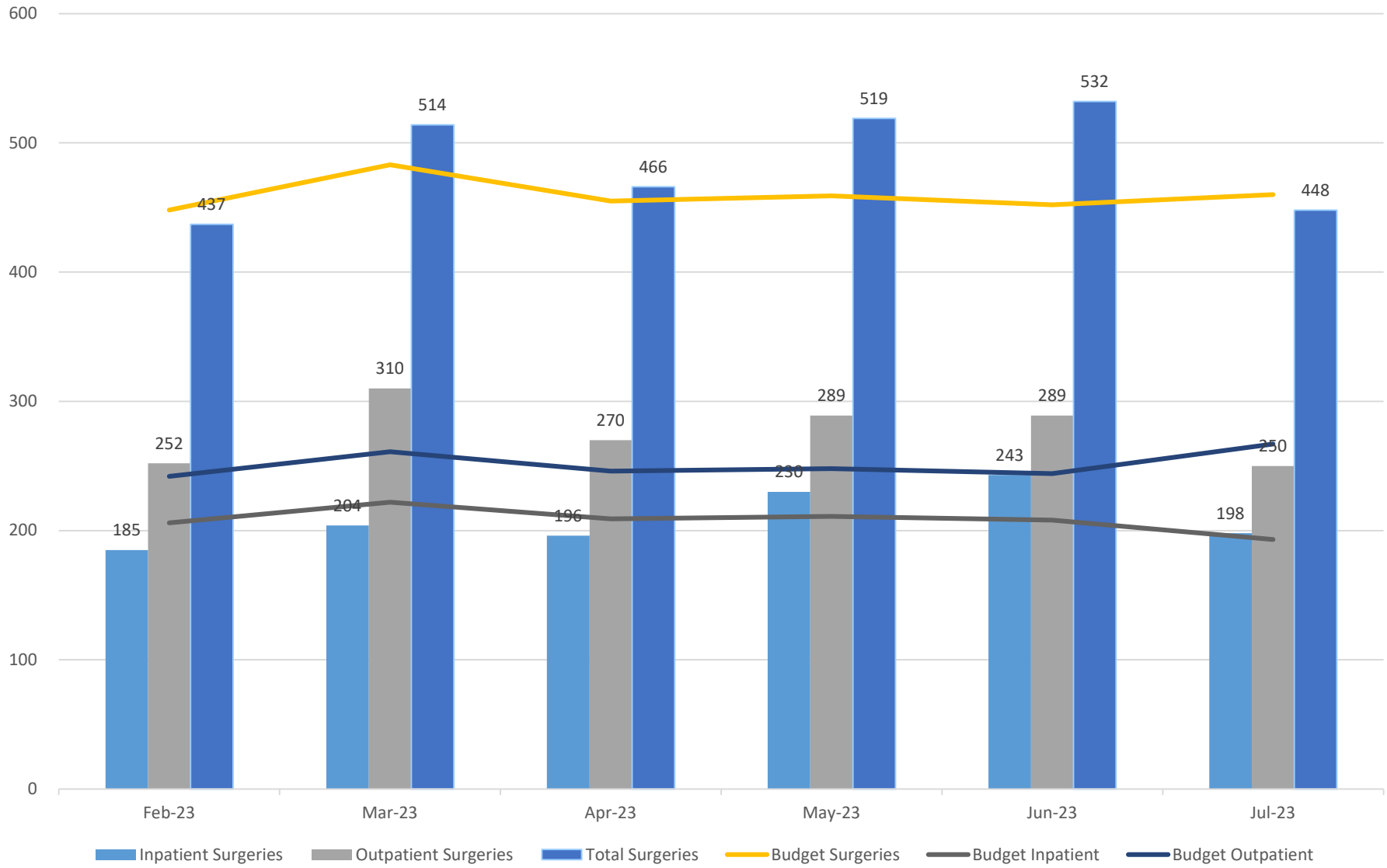
## Emergency Room Volume



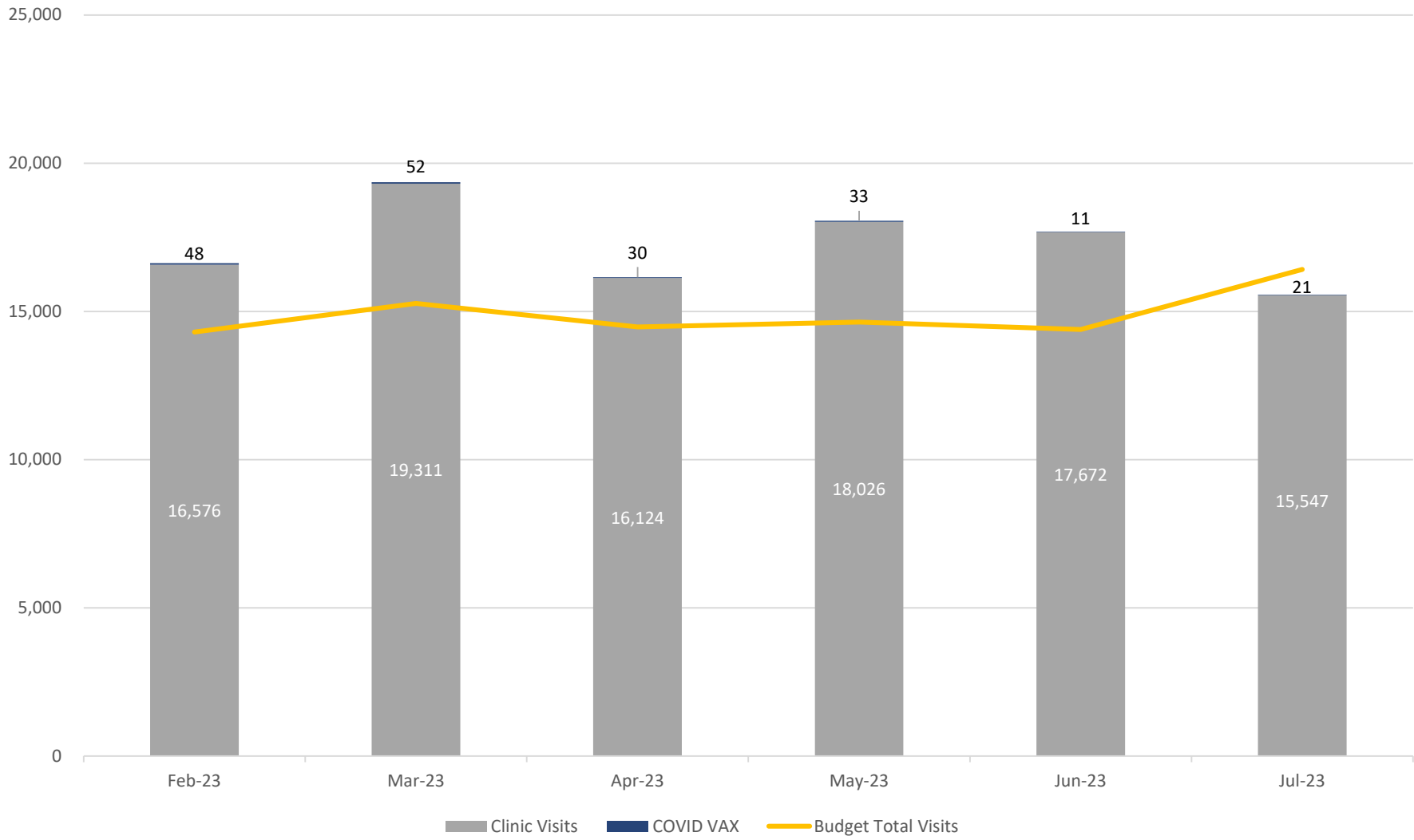
## Trauma Activations



## Surgical Volume

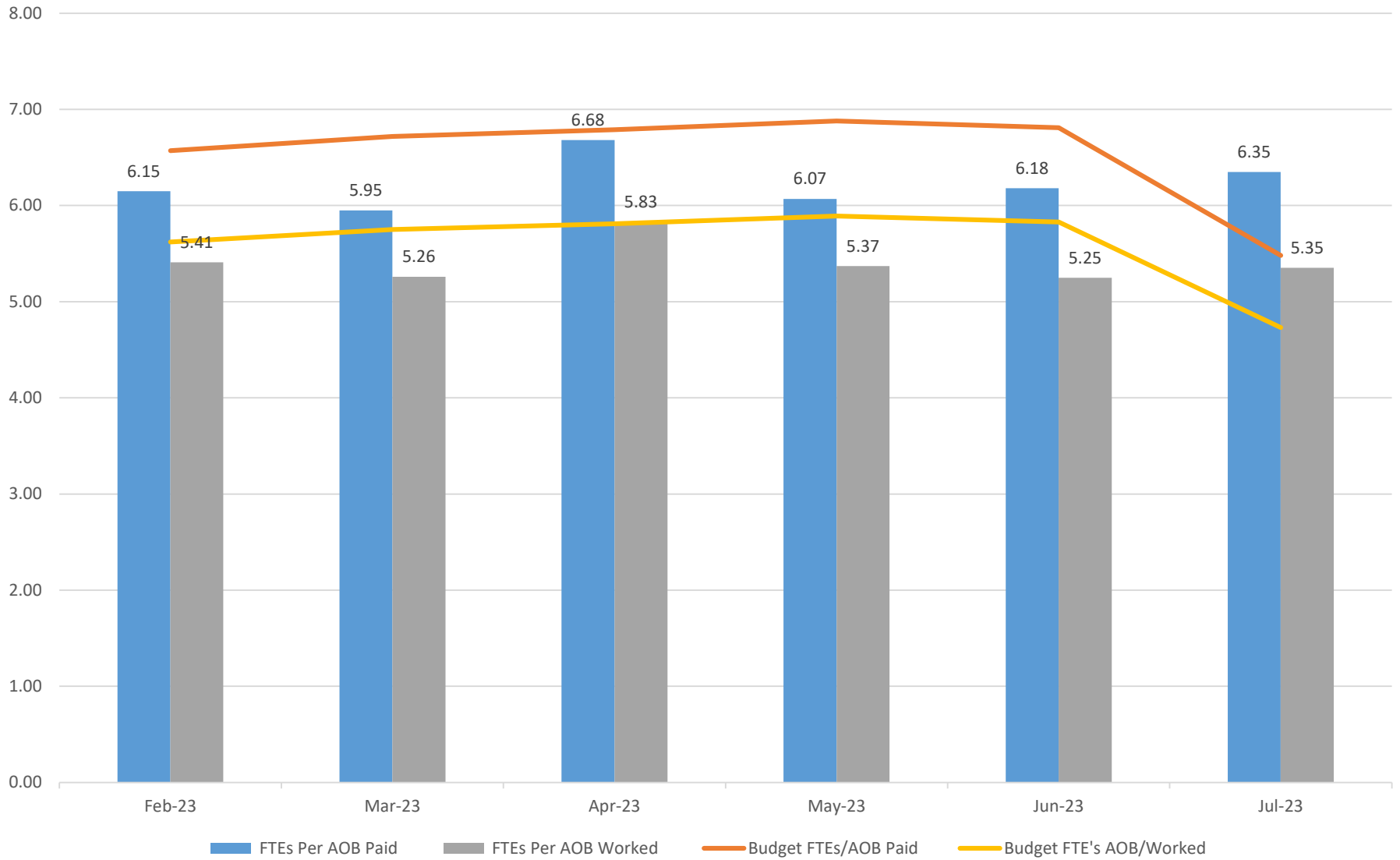


## Clinic Visits

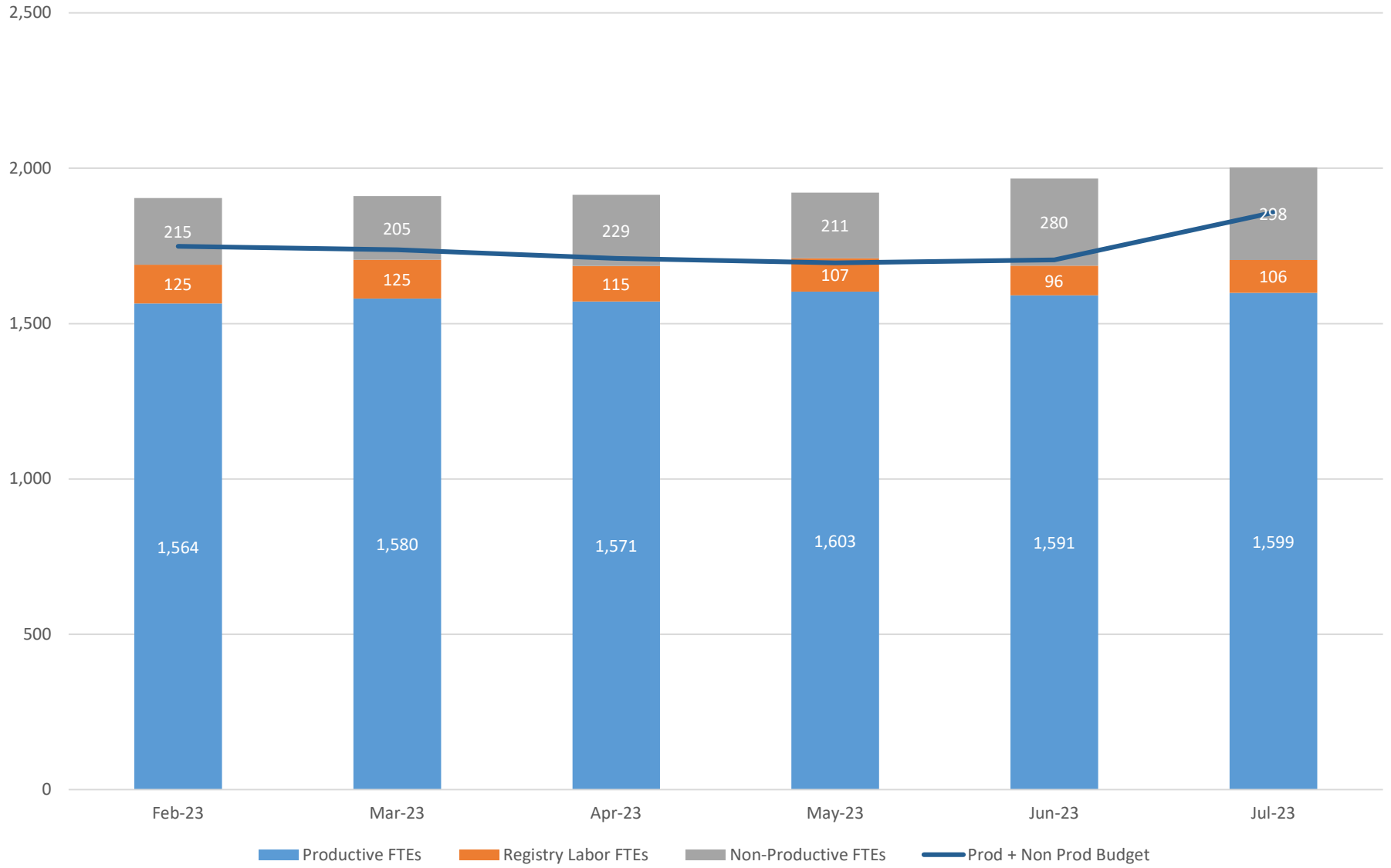




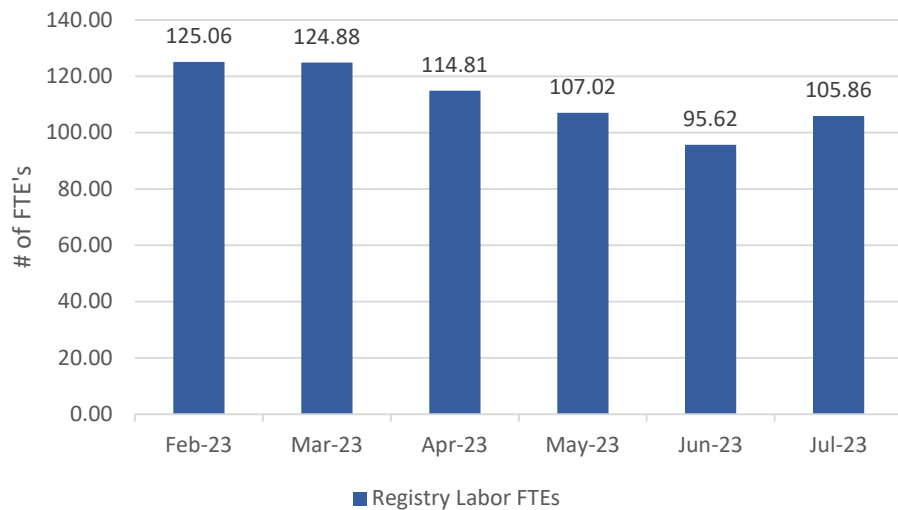
## Labor Metrics



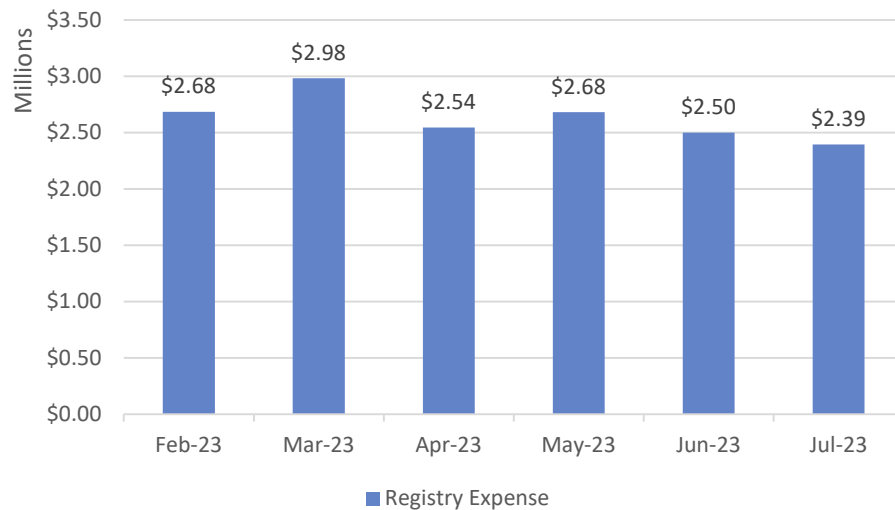
## Productivity



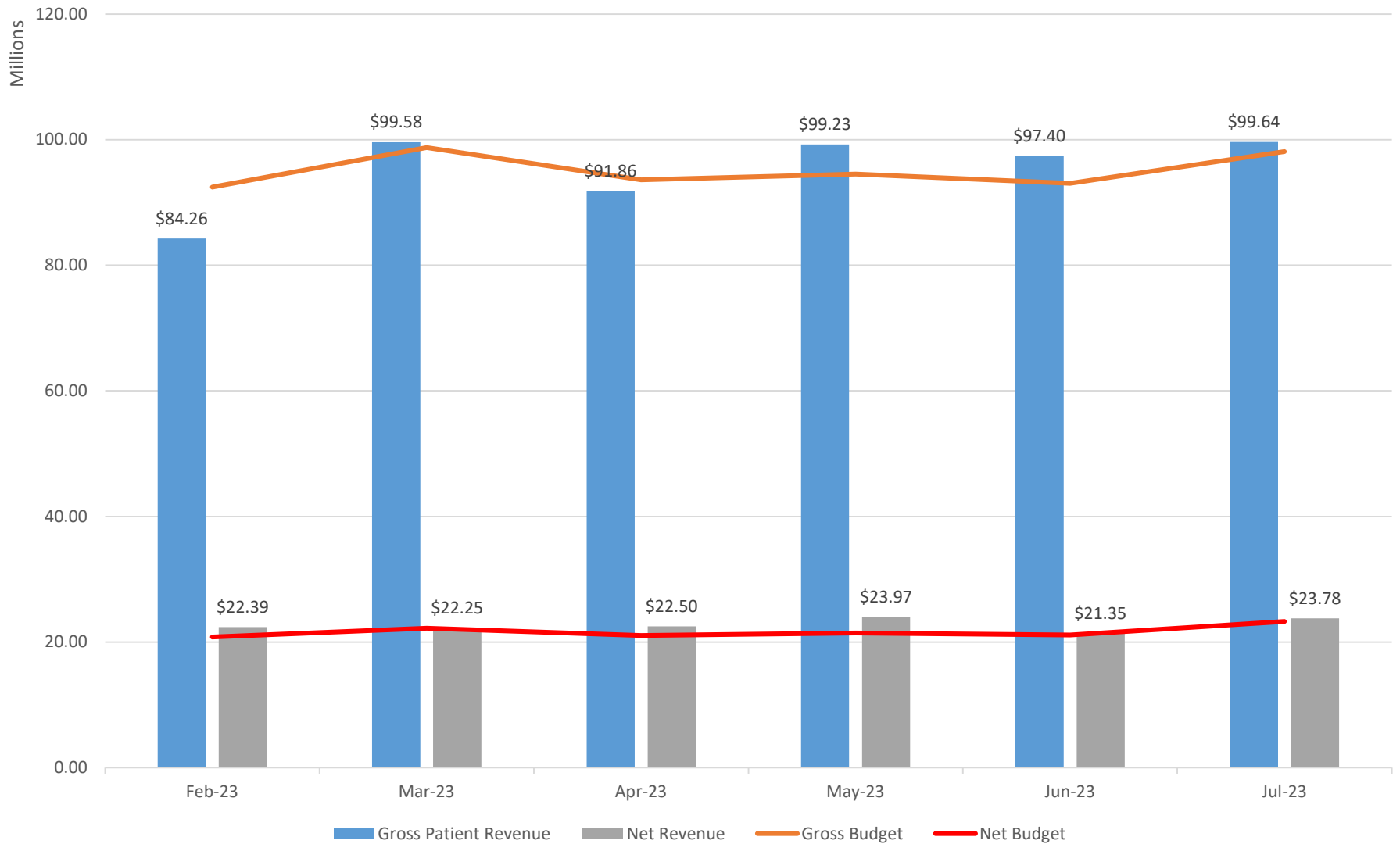
### Registry FTE's



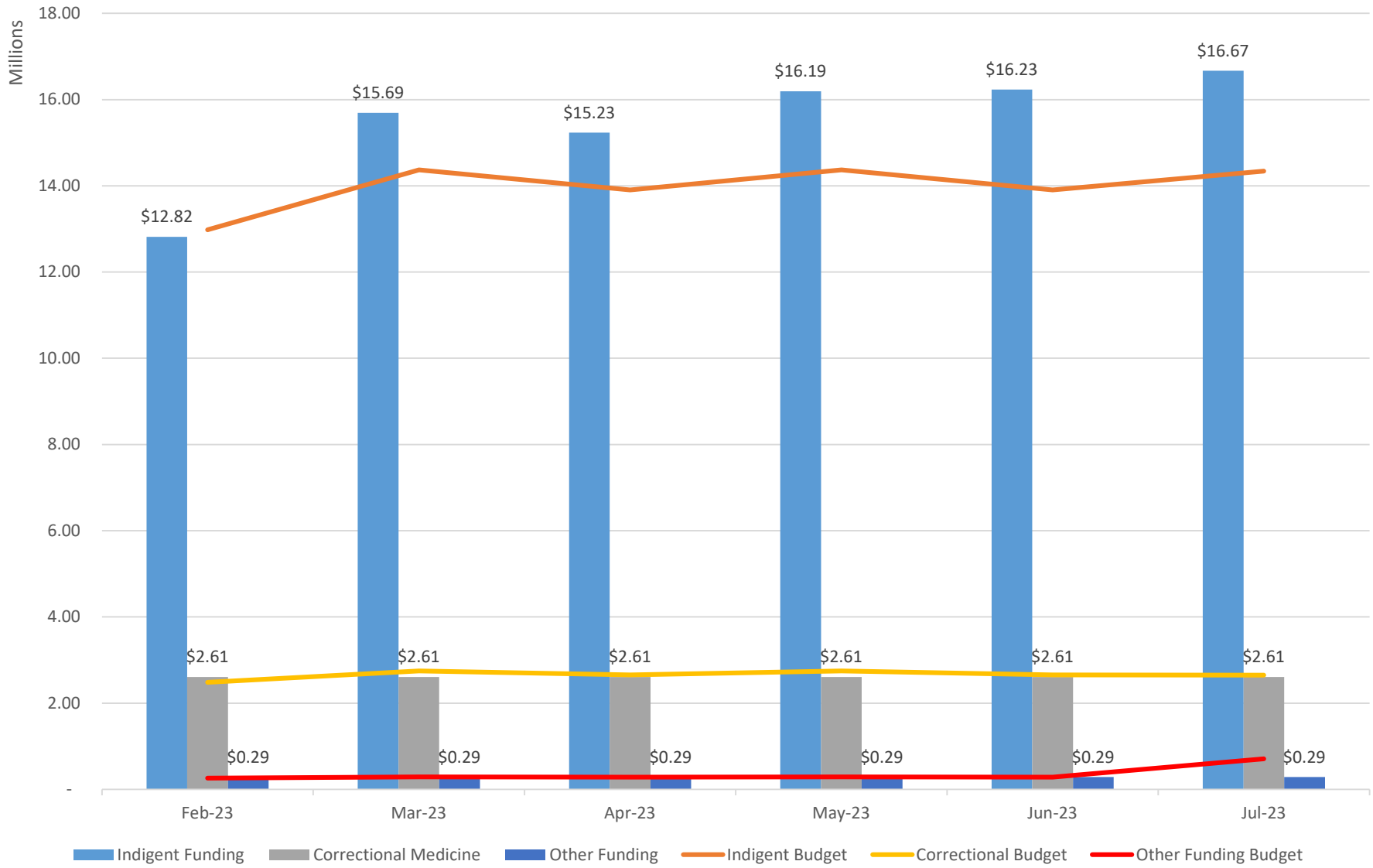
### Registry Expense



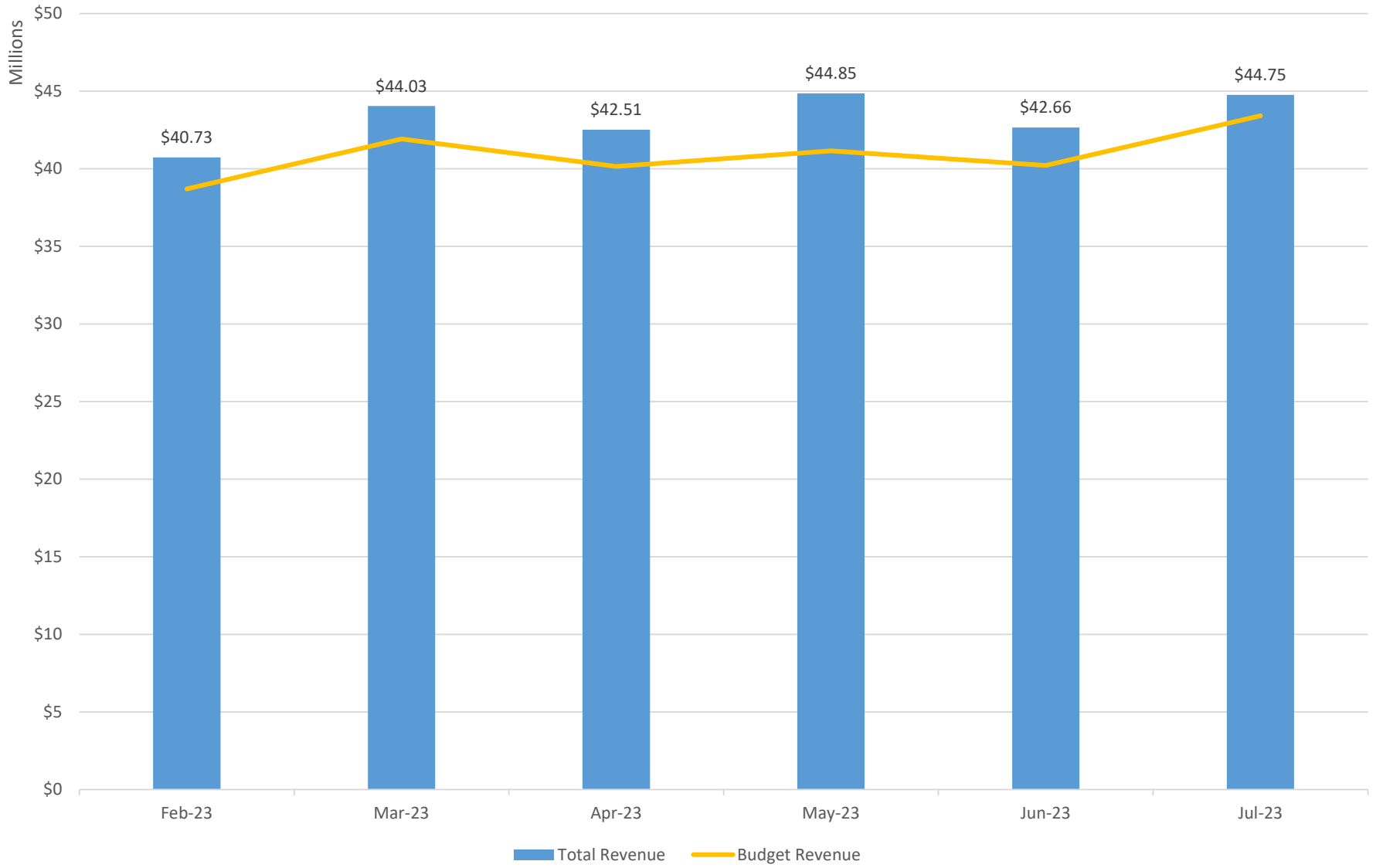
## Patient Revenue



## Indigent & Correctional Revenue

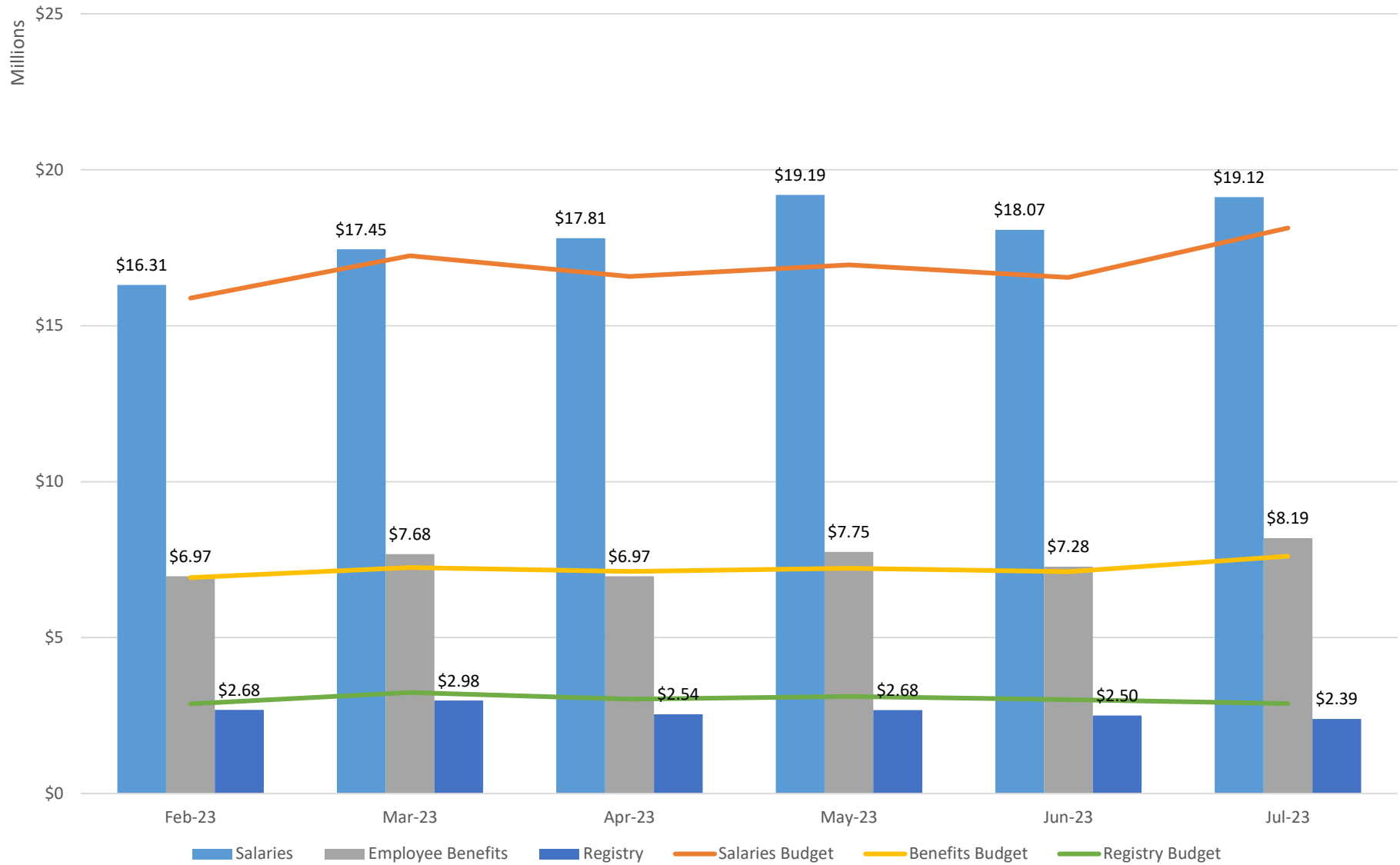


## Total Revenue

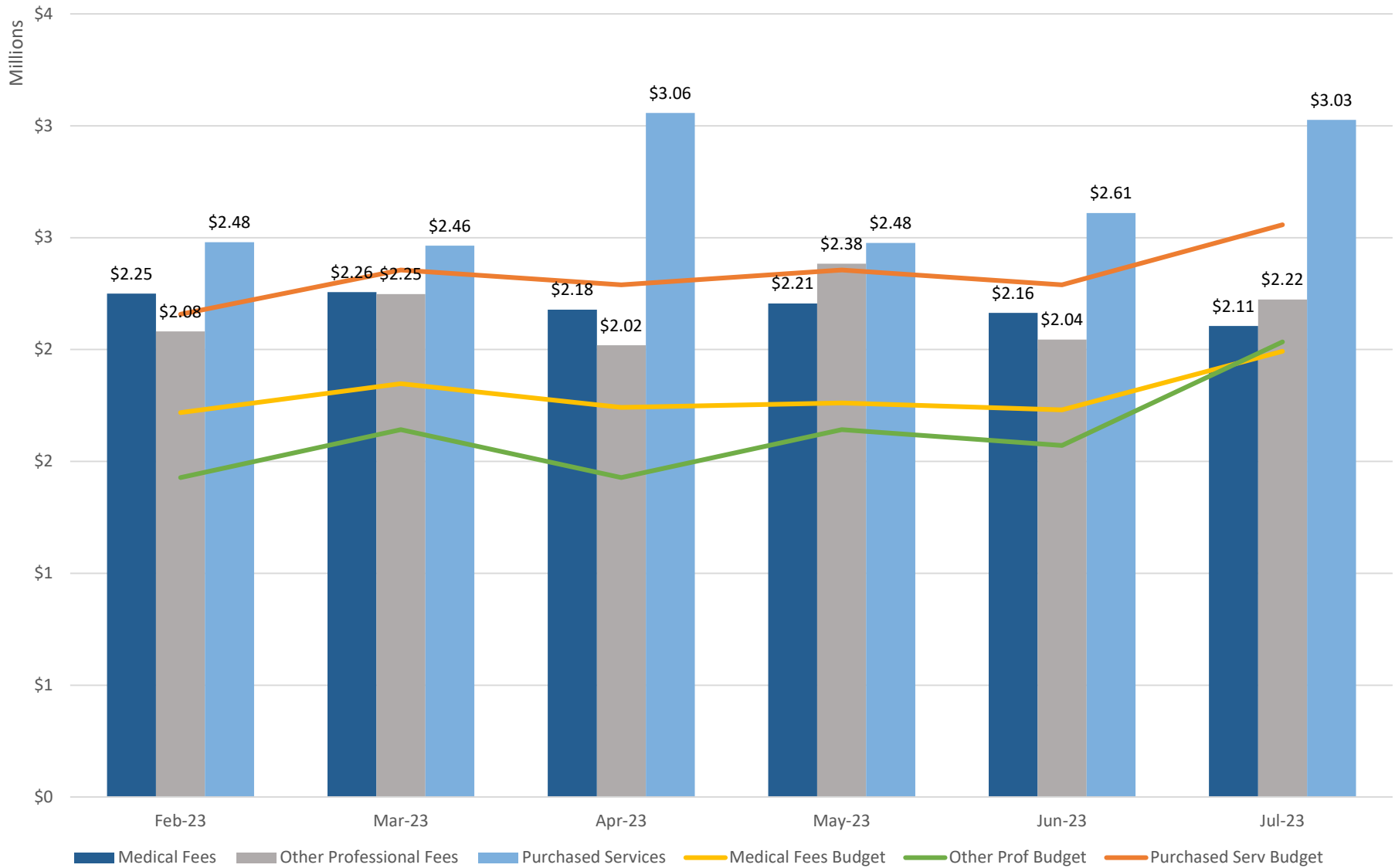




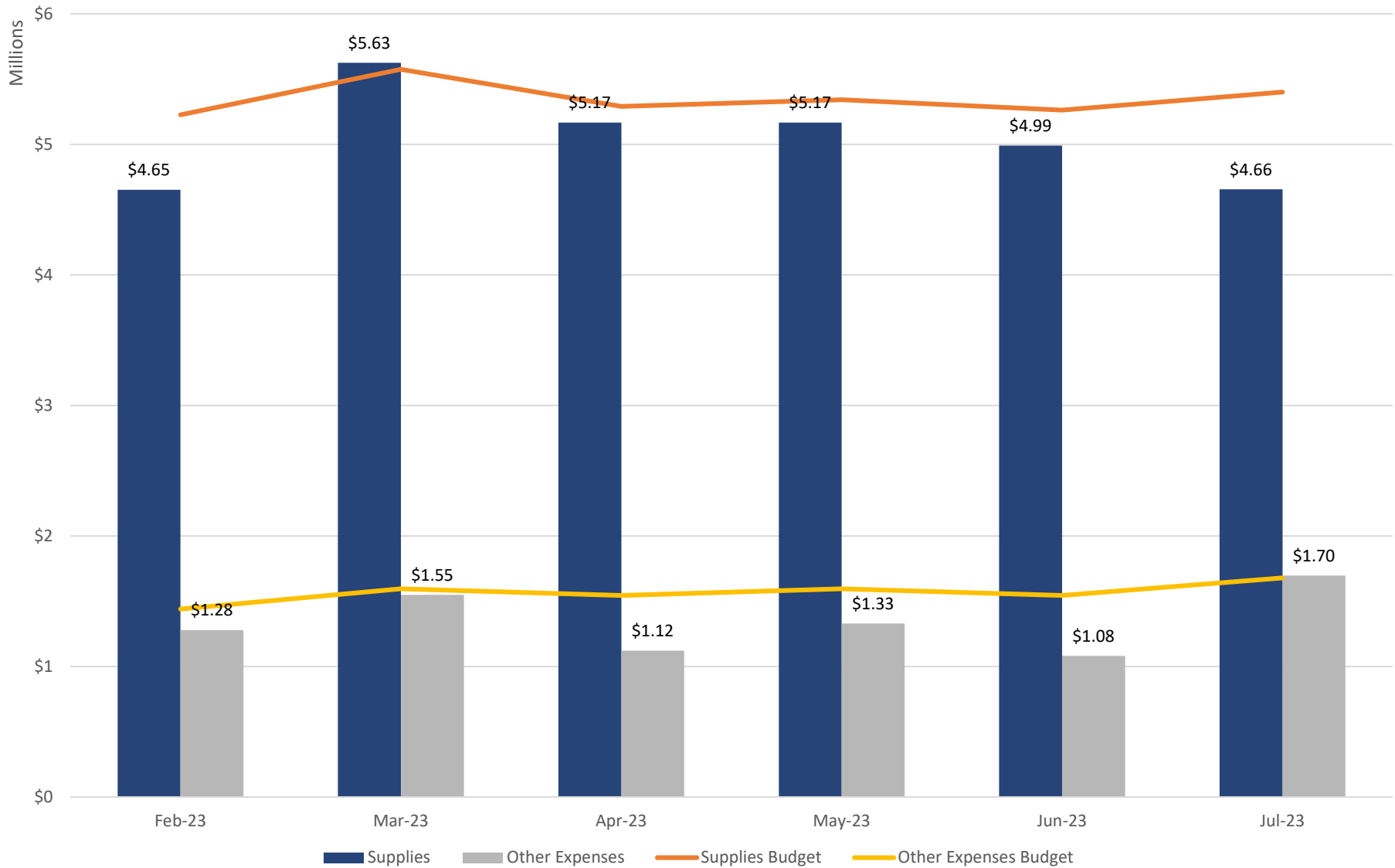
## Expenses



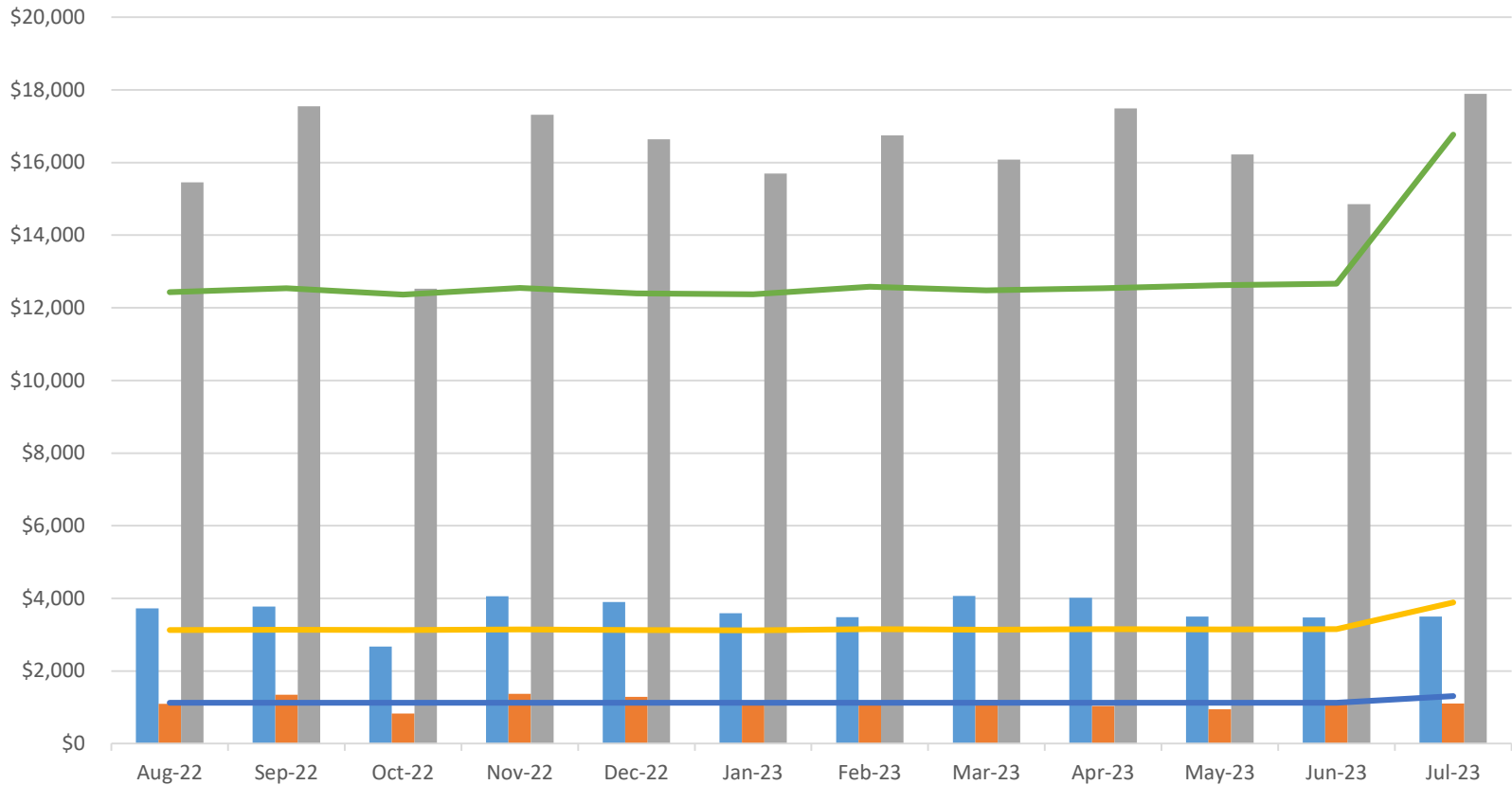
## Expenses



## Expenses

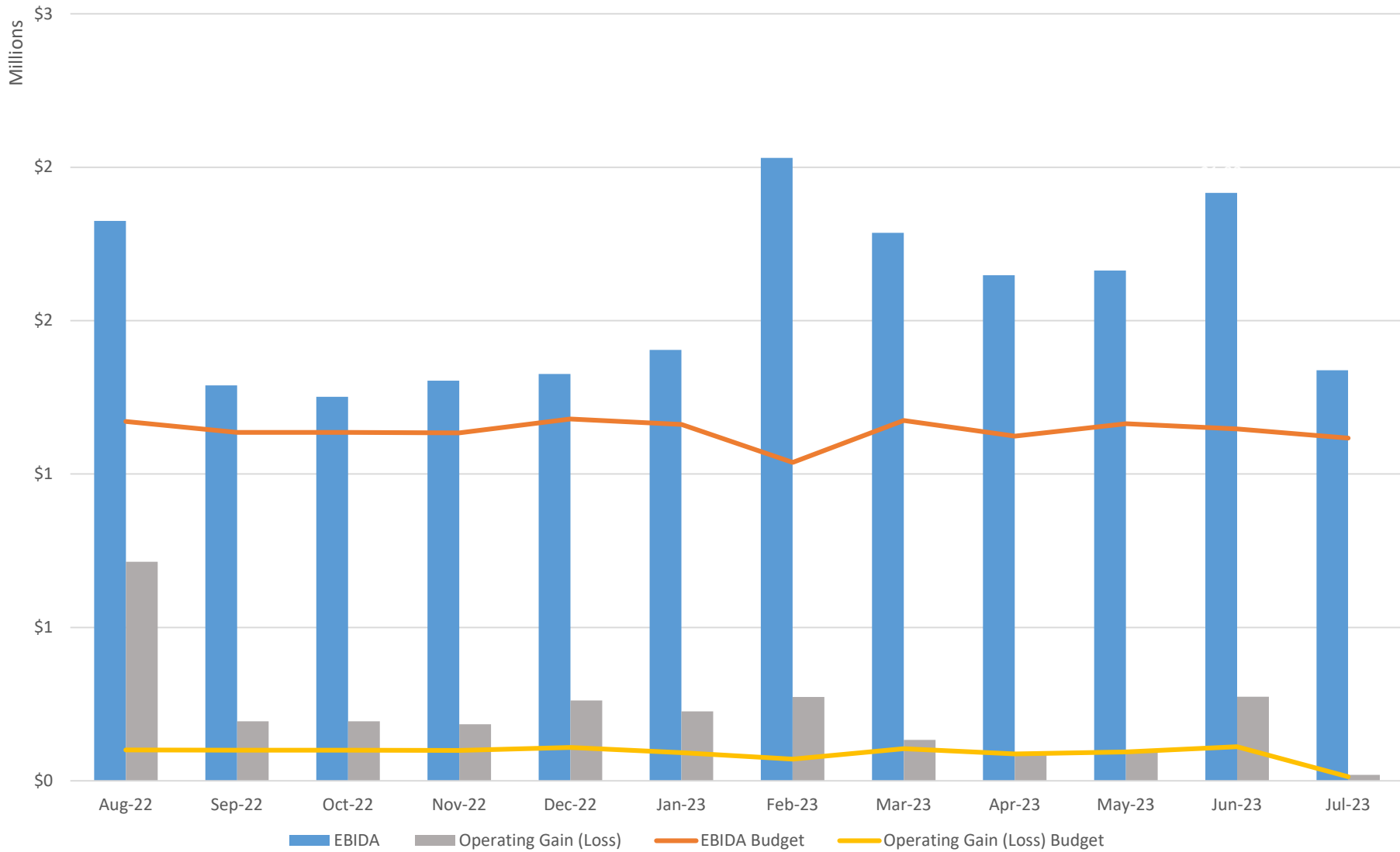


## Operating Metrics

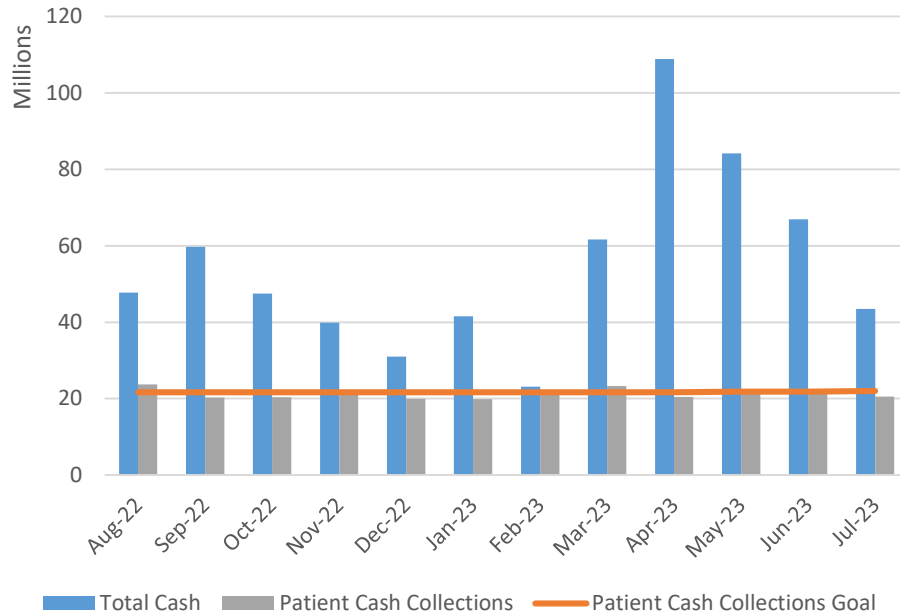


	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23
Supply Expense per AA	\$3,728	\$3,773	\$2,670	\$4,056	\$3,902	\$3,588	\$3,480	\$4,065	\$4,016	\$3,497	\$3,473	\$3,502
Pharm Cost per AA	\$1,101	\$1,349	\$826	\$1,368	\$1,293	\$1,153	\$1,094	\$1,199	\$1,037	\$948	\$1,115	\$1,104
Net Revenue Per AA	\$15,451	\$17,552	\$12,523	\$17,317	\$16,642	\$15,694	\$16,749	\$16,078	\$17,486	\$16,224	\$14,857	\$17,893
Budget Supp/AA	\$3,125	\$3,140	\$3,127	\$3,145	\$3,124	\$3,122	\$3,156	\$3,133	\$3,151	\$3,145	\$3,153	\$3,891
Budget Pharm/AA	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,127	\$1,128	\$1,127	\$1,126	\$1,127	\$1,310
Budget Net Rev/AA	\$12,428	\$12,543	\$12,368	\$12,545	\$12,398	\$12,368	\$12,579	\$12,483	\$12,539	\$12,624	\$12,661	\$16,765

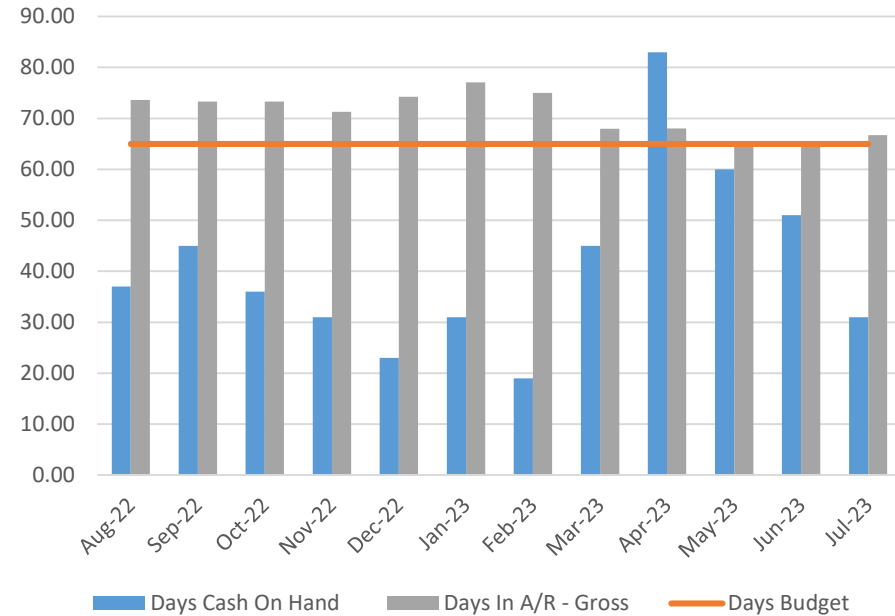
## EBIDA Rolling Year



### Cash Rolling Year



### AR Days Rolling Year





**KERN MEDICAL**  
**3-Month Trend Analysis: Revenue & Expense**  
July 31, 2023

				BUDGET	VARIANCE	PY
	MAY	JUNE	JULY	JULY	POS (NEG)	JULY
<b>Gross Patient Revenue</b>	\$ 99,228,998	\$ 97,404,066	\$ 99,642,472	\$ 98,111,899	2%	\$ 92,471,107
Contractual Deductions	(75,262,969)	(76,052,042)	(75,858,703)	(74,841,492)	1%	(69,920,186)
<b>Net Revenue</b>	23,966,029	21,352,024	23,783,769	23,270,406	2.2%	22,550,921
Indigent Funding	16,191,888	16,234,085	16,669,352	14,338,567	16%	14,191,888
Correctional Medicine	2,608,481	2,608,481	2,608,481	2,651,620	(2%)	2,746,855
County Contribution	285,211	285,211	285,211	282,447	1%	285,211
Incentive Funding	0	0	0	425,000	(100%)	0
<b>Net Patient Revenue</b>	43,051,609	40,479,801	43,346,813	40,968,041	6%	39,774,875
Other Operating Revenue	85,924	2,165,774	1,331,549	2,428,863	(45%)	1,524,826
Other Non-Operating Revenue	1,711,470	13,499	72,460	13,060	455%	11,583
<b>Total Revenue</b>	44,849,003	42,659,074	44,750,822	43,409,964	3%	41,311,284
<b>Expenses</b>						
Salaries	19,193,756	18,074,740	19,120,192	18,136,994	5%	17,068,626
Employee Benefits	7,749,770	7,277,709	8,191,034	7,608,413	8%	6,384,561
Registry	2,679,781	2,499,272	2,393,441	2,885,894	(17%)	3,592,259
Medical Fees	2,205,580	2,163,682	2,105,015	1,991,696	6%	1,885,530
Other Professional Fees	2,383,920	2,044,784	2,223,784	2,033,569	9%	1,981,485
Supplies	5,166,280	4,991,485	4,655,576	5,400,683	(14%)	4,655,496
Purchased Services	2,476,452	2,609,869	3,026,004	2,557,117	18%	2,580,701
Other Expenses	1,330,266	1,081,045	1,697,541	1,678,508	1%	1,878,413
Operating Expenses	43,185,805	40,742,586	43,412,587	42,292,873	3%	40,027,072
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,663,198	\$ 1,916,488	\$ 1,338,235	\$ 1,117,091	20%	\$ 1,284,212
EBIDA Margin	4%	4%	3%	3%	16%	3%
Interest	153,918	154,659	214,507	117,423	83%	110,982
Depreciation	664,728	633,644	648,884	699,368	(7%)	674,589
Amortization	745,301	854,104	454,983	286,579	59%	294,594
Total Expenses	44,749,752	42,384,994	44,730,961	43,396,242	3%	41,107,238
<b>Operating Gain (Loss)</b>	\$ 99,251	\$ 274,081	\$ 19,862	\$ 13,722	45%	\$ 204,047
<b>Operating Margin</b>	0.2%	0.6%	0.0%	0.0%	40.4%	0.5%

**KERN MEDICAL**  
**Year to Date: Revenue & Expense**  
July 31, 2023

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>Gross Patient Revenue</b>	\$ 99,642,472	\$ 98,111,899	2%	\$ 92,471,107	8%
Contractual Deductions	(75,858,703)	(74,841,492)	1%	(69,920,186)	8%
<b>Net Revenue</b>	23,783,769	23,270,406	2%	22,550,921	
Indigent Funding	16,669,352	14,338,567	16.3%	14,191,888	17%
Correctional Medicine	2,608,481	2,651,620	(2%)	2,746,855	(5%)
County Contribution	285,211	282,447	1%	285,211	0.0%
Incentive Funding	0	425,000	(100%)	0	0.0%
<b>Net Patient Revenue</b>	43,346,813	40,968,041	6%	39,774,875	9%
Other Operating Revenue	1,331,549	2,428,863	(45%)	1,524,826	(13%)
Other Non-Operating Revenue	72,460	13,060	455%	11,583	526%
<b>Total Revenue</b>	44,750,822	43,409,964	3%	41,311,284	8%
<b>Expenses</b>					
Salaries	19,120,192	18,136,994	5.4%	17,068,626	12%
Employee Benefits	8,191,034	7,608,413	7.7%	6,384,561	28%
Registry	2,393,441	2,885,894	(17%)	3,592,259	(33%)
Medical Fees	2,105,015	1,991,696	6%	1,885,530	12%
Other Professional Fees	2,223,784	2,033,569	9%	1,981,485	12%
Supplies	4,655,576	5,400,683	(14%)	4,655,496	0%
Purchased Services	3,026,004	2,557,117	18%	2,580,701	17%
Other Expenses	1,697,541	1,678,508	1%	1,878,413	(10%)
Operating Expenses	43,412,587	42,292,873	3%	40,027,072	8%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,338,235	\$ 1,117,091	20%	\$ 1,284,212	4%
EBIDA Margin	3%	3%	16%	3%	(4%)
Interest	214,507	117,423	83%	110,982	93%
Depreciation	648,884	699,368	(7%)	674,589	(4%)
Amortization	454,983	286,579	59%	294,594	54%
Total Expenses	44,730,961	43,396,242	3%	41,107,238	9%
<b>Operating Gain (Loss)</b>	\$ 19,862	\$ 13,722	45%	\$ 204,047	(90%)
<b>Operating Margin</b>	0.0%	0.0%	40.4%	0.5%	(91%)

**KERN MEDICAL  
BALANCE SHEET**

	JULY 2023	JULY 2022
<b>ASSETS:</b>		
<b><i>Total Cash</i></b>	<b>\$ 43,512,032</b>	<b>\$ 68,151,200</b>
Patient Receivables Subtotal	239,686,356	262,471,690
Contractual Subtotal	(179,176,067)	(213,362,200)
<b><i>Net Patient Receivable</i></b>	<b>60,510,289</b>	<b>49,109,490</b>
Total Indigent Receivable	220,357,032	140,371,466
Total Other Receivable	20,277,033	12,100,010
Total Prepaid Expenses	5,660,812	4,884,457
Total Inventory	5,627,099	4,162,888
<b><i>Total Current Assets</i></b>	<b>355,944,296</b>	<b>278,779,510</b>
Deferred Outflows of Resources	105,241,458	127,290,855
Total Land, Equipment, Buildings and Intangibles	253,350,416	224,656,374
Total Construction in Progress	12,405,026	6,890,452
<b><i>Total Property, Plant &amp; Equipment</i></b>	<b>265,755,441</b>	<b>231,546,826</b>
Total Accumulated Depr & Amortization	(156,511,972)	(137,639,182)
<b><i>Net Property, Plant, and Equipment</i></b>	<b>109,243,470</b>	<b>93,907,644</b>
<b><i>Total Long Term Assets</i></b>	<b>105,241,458</b>	<b>127,290,855</b>
<b><i>Total Assets</i></b>	<b>\$ 570,429,224</b>	<b>\$ 499,978,009</b>

**KERN MEDICAL  
BALANCE SHEET**

	JULY 2023	JULY 2022
<b>LIABILITIES &amp; EQUITY:</b>		
Total Accounts Payable	\$ 10,337,232	\$ 14,202,752
Total Accrued Compensation	26,861,987	31,574,148
Total Due Government Agencies	15,843,989	16,472,547
Total Other Accrued Liabilities	30,477,430	25,067,285
<b><i>Total Current Liabilities</i></b>	<b>83,520,637</b>	<b>87,316,731</b>
Unfunded Pension Liability	284,243,193	381,152,811
Other Long-Term Liabilities	134,837,243	61,859,422
<b><i>Total Long-Term Liabilities</i></b>	<b>419,080,436</b>	<b>443,012,233</b>
<b><i>Total Liabilities</i></b>	<b>502,601,073</b>	<b>530,328,964</b>
Fund Balance	36,714,022	36,714,022
Retained Earnings	31,114,129	(67,064,977)
<b><i>Total Fund Balance</i></b>	<b>67,828,151</b>	<b>(30,350,956)</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>\$ 570,429,224</b>	<b>\$ 499,978,009</b>



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

September 20, 2023

**Subject:** Kern County Hospital Authority Chief Executive Officer Report

**Recommended Action:** Receive and File

**Summary:**

The Chief Executive Officer of the Kern County Hospital Authority will provide your Board with a hospital-wide update.



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

September 20, 2023

**Subject:** Monthly report on What's Happening at Kern Medical Center

**Recommended Action:** Receive and File

**Summary:**

Each month Kern Medical will be sharing a report with your Board on "What's Happening" in and around Kern Medical.

Therefore, it is recommended that your Board receive and file the attached report on What's Happening at Kern Medical.





*What's Happening?*

# PARTY IN THE PARKING LOT



# NAMI WALK 2023



 **nami** **Walks**  
*Kern County*

Saturday, October 7

Yokuts Park  
4200 Empire Dr.  
Bakersfield, CA 93309



GRAND OPENING

# Grand Opening

## KERN MEDICAL'S OUTPATIENT PEDIATRICS CLINIC

Walk-Through  
&  
Refreshments

August 28, 2023  
11 AM

Kern Medical's  
Columbus Clinic

1111 Columbus Street  
Bakersfield, CA 93305

 KernMedical






# HOUCHIN BLOOD DRIVE

*blood drive*


FREE  
TICKETS  
TO THE  
KERN COUTNY  
FAIR




**TUESDAY, SEPTEMBER 5 • 10:00 AM -3:00 PM**

**KERN MEDICAL**  
1700 MT VERNON AVENUE • BAKERSFIELD, CA 93306

TO MAKE AN APPOINTMENT, SCAN THE CODE TO THE RIGHT WITH YOUR  
PHONE'S CAMERA OR VISIT [HCBB.COM/SCHEDULE](https://www.hcbb.com/schedule)



*when you give, people live*

**HOUCHIN**   
COMMUNITY BLOOD BANK

# HEALTHFUL HARVEST



**HEALTHFUL  
HARVEST**

**Save the date for a fun-filled community health event  
with food, music, and giveaways!**

**SUNDAY, OCTOBER 28, 2023**

**12:00 PM TO 4:00 PM**

**Haven Drive Middle School  
341 Haven Drive, Arvin 93203**

For more event information, call 661.632.5562

**EVENT PRESENTED BY:**


  Dignity Health.  KAISER  
PERMANENTE.  KernMedical

# KERN MEDICAL IN THE NEWS



**> PARTY IN THE PARKING LOT**

KERN MEDICAL



BACK-TO-SCHOOL WELLNESS CHECK UP EVENT.

PHYSICALS, IMMUNIZATIONS, AND VACCINATIONS

BACKPACKS, HAIRCUTS, FOOD, GIVEAWAYS, AND MUSIC

1111 COLUMBUS ST

SAT. AUGUST 5TH

8 AM - 12 PM



23ABC COMMUNITY CONNECTION

**Kern Medical to hold 'Party in the Parking Lot' back-to-school event**

The event will offer all those things kids need to get ready for back-to-school including physicals, vaccinations, haircuts, and free backpacks, as well as food, live music, and more.



# MEDICAL TRAINING AND EDUCATION LECTURES

## *September*

- ABCs of IRB by Kayvon Milani (Sep. 7)
- Migraine and Other Headaches by Katayoun Sabetian, MD (Sep. 15)
- EM/IM Joint Conference Moderated by Lev Libet, MD (Sep. 21)
- Thoracic Multidisciplinary Conference  
Moderated by Augustine Munoz, MD (sep. 28)

## *October*

- Performance Improvement: Foundations for Success  
by Eunice Hartsock, RN (Oct. 5)
- Stimulant Use Disorder by Sarah Gonzalez, MD (Oct. 12)
- Patient Safety by Toni Won-Hamlet, RN and Kristi Brownfield, RN (Oct. 19)

# NATIONAL RECOGNITIONS IN AUGUST

- Children's Eye Health and Safety Awareness Month
- Digestive Tract Paralysis Awareness Month
- Gastroparesis Awareness Month
- National Breastfeeding Month
- National Eye Exam Month
- National Immunization Awareness Month
- Psoriasis Action Month
- Spinal Muscular Atrophy Awareness Month
- Summer Sun Safety Month
- World Lung Cancer Day (Aug. 1)
- National Grief Awareness Day (Aug. 30)
- International Overdose Awareness Day (Aug. 31)

# NATIONAL RECOGNITIONS IN SEPTEMBER

- Baby Safety Month
- Blood Cancer Awareness Month
- Childhood Cancer Awareness Month
- Gynecologic Cancer Awareness Month
- National Fruit and Veggies Month
- National Sickle Cell Awareness Month
- National Vascular Disease Awareness Month
- Ovarian Cancer Awareness Month
- Suicide Prevention Awareness Month
- Urology Awareness Month
- World Patient Safety Day (September 17)
- Falls Prevention Awareness Day (September 23)
- World Pharmacists Day (September 23)
- National Women's Health and Fitness Day (September 27)
- World Heart Day (September 29)

Did  
you  
know



KernMedical  
Foundation

# Did You Know

## The Mission of the Kern Medical Foundation

The Kern Medical Foundation is a 501(c)3 California not-for-profit public benefit corporation. It has the mission to solely support the Kern County Hospital Authority with the mission to raise funds in support of Kern Medical's life-changing and life-saving programs for patient services, facilities, equipment, education, and research efforts.

# Did You Know

## Meet our new Foundation **Executive Director**



Martha Leon  
Executive Director

Martha serves as the Executive Director of the Kern Medical Foundation. She brings over a decade of experience in fundraising and development, including work at UC San Diego where she played an integral role in their \$3 billion campaign for students success and at CSUB.

At the Foundation she will provide leadership and overall strategy in implementing fundraising programs while working with faculty members, staff, and other key collaborative partners of Kern Medical.

Martha is a Bakersfield native who grew up in Arvin, CA, and graduated from CSUB, she has a 1-year-old daughter named Emilia and loves to visit new places along the coast.



# Did You Know

## *The Grants Process*

### **Stages:**

Planning - Identify Need

Opportunity - Plan the Approach (6-8 weeks before submission)

Apply for Grant Funding - Write Application

Execution and Management - Submit

Application Referral and Review (Up to 8 months after submission)

Pre-Award and Award Process

Post-Award Monitoring

Close Grant



# Did You Know

## Valley Fever Institute

The Valley Fever Institute at Kern Medical was born in 2015.

In 2020, VFI opened its new state-of-the-art research and treatment facility. Designed as a patient-centered specialty care clinic, the Valley Fever Institute incorporates patient care, treatment, support services, education, and research at a single location. We have patients referred to us not only locally, but regionally, nationally, and internationally for specialized care.

Fun Fact: The Director of the Valley Fever Institute, Dr. Royce Johnson, has been with Kern Medical since 1975!



***August is Valley Fever Awareness Month***



# Did You Know

## Meet the Valley Fever Institute Physician Team!



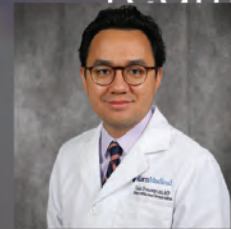
Royce Johnson, MD  
Director



Augustine Munoz, MD  
Physician



Rasha Kuran, MD  
Physician



Carlos D'Assumpcao, MD  
Physician



Michael Valdez, MD  
Infectious Disease Fellow



Mishra Shikha, MD  
Infectious Disease Fellow

# Did You Know

## Meet the Valley Fever Institute Research Team!



Dana Brucker, RN  
Research Manager



Bianca Torres  
Senior Research Assistant



Keny-Tay Mendoza Melo  
Research Assistant



Fernando Rojas-Rodriguez  
Research Assistant



Jeff Jolliff, Pharm.D., APh,  
BCPS, BCACP, AAHIVP, CDE  
Clinical Pharmacist



Michelle Fang, Pharm.D  
Clinical Pharmacist

# Did You Know

## Mujeres en Medicina



The Kern Medical Foundation formed Mujeres en Medicina in 2018.

Its goal is to guide young, local students into careers in healthcare to help address the growing shortage of Healthcare providers in the Central Valley. Mujeres en Medicina is comprised of Hispanic women in a variety of careers at Kern Medical – such as nurses, medical students, pharmacists, laboratory scientists, radiology techs, healthcare administration, and many others.

**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 September 20, 2023, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

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



**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on September 20, 2023, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(d)(4)) Number of cases: One (1) Based on facts and circumstances, the Board of Governors has decided to initiate or is deciding whether to initiate litigation –

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

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  X   CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Christopher Harkins,  
Plaintiff, v. Kern County Hospital Authority, a municipal corporation; and DOES 1  
through 50, inclusive, Defendants, Kern County Superior Court Case No. BCV-23-  
102237 DRZ –

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

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  X   CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521, Charging Party, v. Kern County Hospital Authority,  
Respondent, Public Employment Relations Board Case No. LA-CE-1633-M –

**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 September 20, 2023, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

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

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on September 20, 2023, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

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

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

(Government Code Section 54957.7)

The Board of Governors will hold a closed session on September 20, 2023, to consider:

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



**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54957.7

The Board of Governors will hold a closed session on September 20, 2023, to consider:

  X   PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –