

Staff Services Memorandum of Understanding

This Staff Services Memorandum of Understanding (this "Agreement") is made by and between the County of Fresno ("County") and Fresno Community Hospital and Medical Center dba Community Regional Medical Center ("Hospital").

WHEREAS, California is facing a pandemic arising from the spread of the novel coronavirus (COVID-19), including a surge in the number of people who are infected and have COVID-19 (the "Pandemic");

WHEREAS, in response to the Pandemic, the Governor issued a Proclamation of State of Emergency dated March 4, 2020 and Executive Order (EO) N-25 dated March 12, 2020 (collectively, and as may be further expanded from time to time, the "Emergency Declaration and Executive Order");

WHEREAS, all agencies of the state government are required to perform all activities consistent with the direction of the State, pursuant to the Emergency Declaration and Executive Order;

WHEREAS, certain facilities are experiencing a surge in patients or staffing shortages as a result of the Pandemic;

WHEREAS, maximizing the number of qualified healthcare workers in service in California is imperative to ensure that Californians impacted by COVID-19 can access care;

WHEREAS, the County, in accordance with the Emergency Declaration and Executive Order, has established contracts with private staffing agencies to provide medical staffing resources to ensure adequate staff for treatment sites experiencing staffing impacts due to the Pandemic;

WHEREAS, the Hospital as a result of the Pandemic, requires additional healthcare workers and desires to use direct patient care medical staff registered with the County's contracted staffing agencies (hereinafter "contracted medical staff") to meet the needs of the Hospital's patients;

WHEREAS, the County and the Hospital desire to set forth in writing the terms and conditions of their agreements and understandings;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. TERM OF AGREEMENT AND TERMINATION

This Agreement shall be in effect as of December 16, 2020 until the Governor declares an end to the State of Emergency declared on March 4, 2020, unless terminated earlier pursuant to the terms delineated in this Agreement.

2. DUTIES OF COUNTY

The County shall:

- a. Assign contracted medical staff on a temporary basis to the Hospital for the purposes of addressing shortages of Hospital medical staff resulting from the COVID-19 pandemic.
 - i. Assignments shall be based on the availability of contracted medical staff and shall be made in the sole discretion of the County. There is no guarantee that any contracted medical staff shall be assigned to the Hospital by County. Assignments of contracted medical staff shall be subject to acceptance by the Hospital,
- b. Confirm that contracted medical staff possess current, valid and unrestricted licenses or certification as applicable,
- c. Make payments to County's contracted staffing agencies pursuant to the terms of County's agreement with such contracted staffing agencies that provide staffing at the Hospital.

3. DUTIES OF HOSPITAL

The Hospital shall:

- a. Supervise assigned contracted medical staff performing the Hospital's work in accordance with the Hospital's policies and procedures,
- b. Provide contracted medical staff with an orientation to the Hospital's policies and procedures necessary for contracted medical staff to meet the Hospital's expectations,
- c. Retain responsibility for management of care of the Hospital's patients and for ensuring that services provided by the Hospital, including services by contracted medical staff, are furnished in accordance with applicable standards,
- d. Furnish, at the cost of the Hospital, such equipment, supplies, drugs and other items necessary for contracted medical staff to perform the services provided under this Agreement,
- e. Furnish, at the cost of the Hospital, personal protective equipment required to perform contracted medical staff services under this Agreement,

- f. Notify the County within 24 hours, in writing, of any:
 - i. unexpected incidents, errors and sentinel events that involve contracted medical staff;
 - ii. any occupational safety hazards or events that involve contracted medical staff; or
 - iii. unsatisfactory job performance by contracted medical staff due to incompetence, negligence, or misconduct; or
 - iv. Any complaint or claim raised by or against contracted medical staff related to harassment, discrimination and/or relation under applicable state or federal laws.
- g. Comply with any rules, regulations and any other policies and procedures covering the Hospital, pursuant to both state and federal law, including, but not limited to, laws concerning hours of work and regular breaks for contracted medical staff, equal employment opportunity laws, including Title VII, the Fair Employment and Housing Act, and the California Labor Code.

4. INDEMNIFICATION

- A. COUNTY agrees to indemnify, save, hold harmless, and at HOSPITAL'S request, defend the HOSPITAL, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to HOSPITAL in connection with the performance, or failure to perform, by COUNTY, its officers, agents, or employees under this Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of COUNTY, its officers, agents, or employees under this Agreement. Notwithstanding the foregoing, to the extent permitted by law, COUNTY shall have no liability for any loss, damage, claim, expense or liability incurred in connection with, arising from, resulting from or incident to the actions of contracted medical staff assigned to HOSPITAL.
- B. HOSPITAL agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by HOSPITAL, its officers, agents, or employees under this Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of HOSPITAL, its officers, agents, or employees under this Agreement.

5. INSURANCE: Without limiting the COUNTY'S right to obtain indemnification from HOSPITAL or any third parties, HOSPITAL, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a claims made basis. COUNTY requires

specific coverages including completed operations, products liability, contractual liability, explosion, structural collapse of a building, and fire legal liability.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.

C. Professional Liability

If HOSPITAL employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate. HOSPITAL agrees that it shall maintain, at its sole expense, in full force and effect for a period of three (3) years following the termination of this Agreement, one or more policies of professional liability insurance with limits of coverage as specified herein.

D. Worker's Compensation

A policy of Worker's Compensation insurance as may be required by the California Labor Code.

E. Molestation

Sexual abuse/molestation liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. Two Million Dollars (\$2,000,000.00) annual aggregate. This policy shall be issued on a claims made basis.

F. Additional Requirements Relating to Insurance

HOSPITAL shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance provided under HOSPITAL'S policies herein. In the even that this insurance is cancelled or changed (other than minor changes incident to a policy renewal), HOSPITAL will provide written notice to COUNTY within thirty (30) days.

HOSPITAL hereby waives its right to recover from COUNTY, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. HOSPITAL is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but HOSPITAL'S waiver of subrogation under this paragraph is effective whether or not HOSPITAL obtains such an endorsement.

Within sixty (60) days from the date HOSPITAL signs and executes this Agreement, HOSPITAL shall provide certificates of insurance as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Department of Public Health, P.O. Box 11867, Fresno, CA 93775, Attn: DPH Contracts Section, 6th Floor, stating that such insurance

coverage have been obtained and are in full force; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; and that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under HOSPITAL'S policies herein.

In the event HOSPITAL fails to keep in effect at all times insurance coverage as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better or covered by a program of self-insurance.

6. TERMINATION OF AGREEMENT

The County and the Hospital hereby agree that during the term of this Agreement and any extensions hereof, this Agreement may be terminated: (i) at will by either party with 10 (ten) days notice; (ii) immediately by mutual consent of both parties; or (iii) immediately upon the County providing written notice to the Hospital that the State of Emergency declared by the Governor on March 4, 2020 has terminated.

7. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, the Hospital shall not discriminate unlawfully against any contracted medical staff because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Hospital shall insure that the evaluation and treatment of contracted medical staff are free of such discrimination.

8. INDEPENDENT RELATIONSHIP

None of the provisions of this Agreement are intended to create, nor shall they be deemed or construed to create, any relationship between the County and the Hospital other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective employees, shall be construed to be the agent, employer, employee or representative of the other. Each party is solely responsible for its own acts or omissions to act.

9. NOTICES

The persons and their addresses having authority to give and receive notices under this Agreement include the following:

COUNTY

HOSPITAL

County of Fresno
Department of Public Health Director
1221 Fulton Street
Fresno, CA 93721

Fresno Community Regional Medical Center
Clovis Community Hospital Vice President
2823 Fresno Street
Fresno, CA 93721

All notices between the County and Hospital provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery shall be deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

10. ASSIGNABILITY

Neither this Agreement nor any right or interest hereunder shall be assignable by either Party without the non-assigning Party's prior written consent.

11. AMENDMENT

No amendment or modification of this Agreement shall be effective unless or until executed in writing by the parties hereto.

12. WAIVER OF BREACH

The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver or breach of any other provision or any subsequent breach of any party.

13. TERMINATION DUE TO LEGISLATURE OR ADMINISTRATIVE CHANGE

In the event that there are changes in applicable federal or state laws or regulations, or a change in other third party reimbursement systems which materially affect this Agreement, the County may immediately terminate this Agreement by providing appropriate notice under Section 6.

14. GOVERNING LAW

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

15. SEVERABILITY

If any provision of the Agreement shall be determined to be invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such provision nor the validity of any other provision of this Agreement shall in any way be affected thereby.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding by and between the County and the Hospital, and no representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force and effect. No change or modification hereof shall be valid or binding unless the same is in writing and signed by the party intended to be bound.

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SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives:

THE COUNTY OF FRESNO

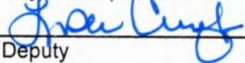
Date: Sept. 21, 2021

By: 

Name: Steve Brandau

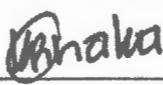
Title: Chairman of the Board of Supervisors of the County of Fresno

ATTEST:

BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of California
By 
Deputy

FRESNO COMMUNITY HOSPITAL AND MEDICAL CENTER
dba Community Medical Centers

Date: 06/14/21

By: 

Name: Kudzi Muchaka

Title: Vice President

For Accounting Use Only:

Fund: 0001

Subclass: 10000

ORG: 56201019

Account: 7295

Program: 0