

AGREEMENT
between
COUNTY OF SANTA BARBARA
and
DIGNITY HEALTH dba MARIAN REGIONAL MEDICAL CENTER
for
MADDY EMERGENCY MEDICAL SERVICES FUND DISTRIBUTIONS

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Dignity Health doing business as Marian Regional Medical Center, a California not-for-profit public benefit corporation with an address at 1400 East Church Street, Santa Maria, CA 93454 (hereafter HOSPITAL) wherein HOSPITAL agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, Health and Safety Code Section 1797.98a-1797.98g created a Maddy Emergency Medical Services (EMS) Fund to provide supplementary payments to hospitals and physicians for the provision of emergency care to the homeless, uninsured, or undocumented for trauma and medical care services; and

WHEREAS, in 2004 the Santa Barbara County Board of Supervisors authorized the Public Health Department to administer the local Maddy EMS Fund program ensuring access to emergency and trauma care and specialists to all residents and visitors; and

WHEREAS, county hospitals have been participants in the Maddy EMS Fund program submitting claims for reimbursement; and

WHEREAS, the Santa Barbara County EMS Agency desires to contract with HOSPITAL for payment for services; and

WHEREAS, HOSPITAL represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of HOSPITAL pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

The Director of the Emergency Management Services (EMS) Agency at phone number (805) 681-5274 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. The President & CEO at phone number 805.739-3600 is the representative of HOSPITAL and will administer this Agreement for and on behalf of HOSPITAL.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: John Eaglesham, Director
Emergency Medical Services Agency
300 N. San Antonio Road

Santa Barbara, CA 93110

To HOSPITAL: Kerin A. Mase, President & CEO
Marian Regional Medical Center
1400 E. Church Street
Santa Maria, CA 93454

cc: Dignity Health
251 S. Lake Ave
Pasadena, CA 91011
Attn: Legal Department

Or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

HOSPITAL agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

HOSPITAL shall commence performance on February 7, 2017 and end performance upon completion, but no later than December 31, 2018 unless otherwise directed by COUNTY or unless earlier terminated.

There shall be four (4) automatic two (2) year term extensions at the agreement of the parties.

5. COMPENSATION OF CONTRACTOR

In full consideration for HOSPITAL's services, HOSPITAL shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that HOSPITAL (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which HOSPITAL shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that HOSPITAL is performing its obligations in accordance with the terms and conditions hereof. HOSPITAL understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. HOSPITAL shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, HOSPITAL shall be solely responsible and save COUNTY harmless from all matters relating to payment of HOSPITAL's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is

acknowledged that during the term of this Agreement, HOSPITAL may be providing services to others unrelated to the COUNTY or to this Agreement.

7. STANDARD OF PERFORMANCE

HOSPITAL represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, HOSPITAL shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which HOSPITAL is engaged. All products of whatsoever nature, which HOSPITAL delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in HOSPITAL's profession. HOSPITAL shall correct or revise any errors or omissions, at COUNTY'S reasonable request without additional compensation. Permits and/or licenses shall be obtained and maintained by HOSPITAL without additional compensation.

8. DEBARMENT AND SUSPENSION

HOSPITAL certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. HOSPITAL certifies that it shall not contract with a subcontractor that is so debarred or suspended.

COUNTY certifies to HOSPITAL that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts.

9. TAXES

HOSPITAL shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on HOSPITAL's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, HOSPITAL agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

HOSPITAL covenants that HOSPITAL presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. HOSPITAL further covenants that in the performance of this Agreement, no person having any such interest shall be employed by HOSPITAL. HOSPITAL must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by HOSPITAL if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to HOSPITAL in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

HOSPITAL shall be the legal owner of the following items directly developed and arising from its performance under this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. COUNTY shall not release any of such items to other parties except after prior written approval of

HOSPITAL provided, however, COUNTY may release such items to other governmental entities which are using Richie funds to support pediatric trauma services in their communities.

HOSPITAL shall be the legal owner and Custodian of Records for all client files generated pursuant to this Agreement, and shall comply with all Federal and State confidentiality laws, including, but not limited to, Welfare and Institutions Code (WIC) §5328; 42 United States Code (U.S.C.) §290dd-2; and 45 CFR, Parts 160 – 164 setting forth the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HOSPITAL shall inform all of its officers, employees, and agents of the confidentiality provision of said laws. HOSPITAL further agrees to provide COUNTY with copies of all County client file documents resulting from this Agreement without requiring any further written release of information. Within HIPAA guidelines, COUNTY shall have the unrestricted authority to publish, disclose, distribute, and/or otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

12. NO PUBLICITY OR ENDORSEMENT

HOSPITAL shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. HOSPITAL shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing HOSPITAL. HOSPITAL shall not in any way contract on behalf of or in the name of COUNTY. HOSPITAL shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

13. COUNTY PROPERTY AND INFORMATION

All of COUNTY's property, documents, and information provided for HOSPITAL's use in connection with the services shall remain COUNTY's property, and HOSPITAL shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. HOSPITAL may use such items only in connection with providing the services. HOSPITAL shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

HOSPITAL shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of HOSPITAL's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during HOSPITAL's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), HOSPITAL shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). HOSPITAL shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, HOSPITAL shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, HOSPITAL shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. INDEMNIFICATION AND INSURANCE

Hospital agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

COUNTY hereby notifies HOSPITAL that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and HOSPITAL agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

HOSPITAL understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by HOSPITAL as the COUNTY desires. COUNTY understands that this is not an exclusive Agreement and that HOSPITAL shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by COUNTY as the HOSPITAL desires.

18. NON-ASSIGNMENT

HOSPITAL shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement, except to an affiliate of HOSPITAL that is also located within Santa Barbara County without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. TERMINATION

- A. By COUNTY. COUNTY may, by written notice to HOSPITAL, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of HOSPITAL to fulfill the obligations herein.
1. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, HOSPITAL shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.
 2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify HOSPITAL of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
 3. **For Cause.** Should HOSPITAL default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, HOSPITAL shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its

performance. The date of termination shall be the date the notice is received by HOSPITAL, unless the notice directs otherwise.

B. BY HOSPITAL.

1. For Convenience. HOSPITAL may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, HOSPITAL shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.
2. For Cause. Should COUNTY default in the performance of this Agreement or materially breach any of its provisions, HOSPITAL may, at HOSPITAL's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, COUNTY shall immediately discontinue all services affected (unless the notice directs otherwise) and notify HOSPITAL as to the status of its performance. The date of termination shall be the date the notice is received by COUNTY, unless the notice directs otherwise.

- C. Upon termination, HOSPITAL shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by HOSPITAL in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit HOSPITAL to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay HOSPITAL for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall HOSPITAL be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. HOSPITAL shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by HOSPITAL. In the event of a dispute as to the reasonable value of the services rendered by HOSPITAL, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

20. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

25. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. COMPLIANCE WITH LAW

HOSPITAL shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of HOSPITAL in any action or proceeding against HOSPITAL, whether COUNTY is a party thereto or not, that HOSPITAL has violated any such ordinance or statute, shall be conclusive of that fact as between HOSPITAL and COUNTY.

COUNTY shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of COUNTY in any action or proceeding against COUNTY, whether HOSPITAL is a party thereto or not, that COUNTY has violated any such ordinance or statute, shall be conclusive of that fact as between HOSPITAL and COUNTY.

28. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, HOSPITAL hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which HOSPITAL is obligated, which breach would have a material effect hereon.

31. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

[SIGNATURE PAGE TO FOLLOW]

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Marian Regional Medical Center**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

Carrie Topliffe
Interim Director

APPROVED AS TO FORM:

John H. Eaglesham
EMS Agency

By: _____
Department Head

By: _____
EMS Agency Director

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

APPROVED AS TO ACCOUNTING FORM:

Theodore A. Fallati, CPA
Auditor-Controller

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

Risk Management

By: _____
Risk Management

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Marian Regional Medical Center**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

HOSPITAL

CONTRACTOR:

Marian Regional Medical Center
Dignity Health

By:  1.17.17
Authorized Representative

Name: Kerin A. Mase

Title: President and CEO

EXHIBIT A

STATEMENT OF WORK

COUNTY SHALL:

- Collect Maddy EMS Funds from Courts in accordance with Health and Safety Code sections 1797.98a through 1797.98g, and Government Code section 76000;
- Distribute funds collected in accordance with this legislation;
- Ensure payment does not exceed fifty percent of the amount of the claim per Health and Safety Code section 1797.98a(d);
- Develop a payment schedule and process;
- Distribute funds on a quarterly basis following invoicing from HOSPITAL; and
- Collect and keep on file a signed Maddy EMS Fund Condition Statement from HOSPITAL.

HOSPITAL SHALL:

- Comply with Health and Safety Code 1797.98a through 1797.98g.
- Submit an invoice for Maddy EMS Funds on a quarterly basis in accordance with the Maddy Hospital Payment Schedule herein.
- Submit a signed Maddy EMS Fund Condition Statement bi-annually commencing on January 1, 2017 that shall be kept on file with the EMS Agency.
- Include the following language on HOSPITAL's invoice:
 - I, _____ certify under penalty of perjury that I am an official of and am duly authorized to sign the certification and that to the best of my knowledge and information, I believe the amount of the accompanying invoice to be true, correct, and in compliance with the Maddy EMS Fund Condition Statement and applicable state laws.

Maddy Hospital Payment Schedule

Calendar Year Quarter	Services Provided Between	EMS Submits Allocation to Hospital	Hospital Invoice Submission to EMS	Invoice Payment Date
First	January 1 – March 31	10-Jun	30-Jun	15-Jul
Second	April 1 – June 30	10-Sep	30-Sep	15-Oct
Third	July 1 – September 30	10-Dec	30-Dec	15-Jan
Fourth	Oct 1 – December 31	10-Mar	30-Mar	15-Apr

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation

- A. For HOSPITAL services to be rendered under this Agreement, HOSPITAL shall be paid up to a total contract amount, including cost reimbursements, not to exceed **\$206,000**.
- B. Payment for services and /or reimbursement of costs shall be made upon HOSPITAL's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY.
- C. Quarterly, HOSPITAL shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from HOSPITAL.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require HOSPITAL to correct such work or billings or seek any other legal remedy.
- E. Payments to HOSPITAL will occur on a quarterly basis upon receipt of invoice.

EXHIBIT C
Indemnification and Insurance Requirements

INDEMNIFICATION

HOSPITAL agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of HOSPITAL, its officers, employees or agents. COUNTY shall promptly give HOSPITAL notice of any such claim.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

HOSPITAL shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

HOSPITAL shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the HOSPITAL, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Comprehensive or Commercial General Liability Insurance on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** Automobile Liability Insurance, including coverage for all owned, hired and non-owned automobiles, with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the HOSPITAL'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the HOSPITAL maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the HOSPITAL. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the HOSPITAL including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the HOSPITAL's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the HOSPITAL's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the HOSPITAL's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – HOSPITAL hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said HOSPITAL may acquire against the COUNTY by virtue of the payment of any loss under such insurance. HOSPITAL agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation; provided that if such a waiver is not available from a party's insurance company, that party will be relieved of its obligation to obtain a waiver of subrogation.
5. **Verification of Coverage** – HOSPITAL shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the HOSPITAL's obligation to provide them. The HOSPITAL shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
6. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
7. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. 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, the HOSPITAL

must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

- 8. Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances subject to HOSPITAL's consent, which shall not be unreasonably withheld. In the event HOSPITAL does not consent, either party may terminate this Agreement.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. HOSPITAL agrees to execute any such amendment within thirty (30) days of receipt, provided HOSPITAL has consented as provided in paragraph 8 above.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.