

INDEPENDENT CONTRACTOR AGREEMENT FOR SPECIAL SERVICES
Fire Services Medical Director

THIS AGREEMENT (“Agreement”) is by and between the Sacramento Regional Public Safety Communications Center (“Center”) and The Permanente Medical Group (“TPMG”). Together, Center and TPMG are referred to as the Parties.

RECITALS

WHEREAS, the Center needs a licensed physician to provide oversight of all medical aspects of both the fire and ~~EMS rescue~~ divisions of the member and contracting fire agencies of the Center who are participants in the Sacramento County Emergency Medical Services Agency (SCEMSA); and

WHEREAS, Dr. Kevin E. Mackey (“Dr. Mackey” or “Medical Director”) is qualified and willing to provide these services; and

WHEREAS, TPMG has agreed to assign Dr. Mackey to perform these services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and in exchange for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals and Exhibits.

The preceding recitals, and all subsequent Exhibits, are incorporated as though fully set forth in this Agreement. The included Exhibits are:

- Exhibit A-1 Scope of Services
- Exhibit A-2 Annual Goals
- Exhibit B Compensation
- Exhibit C General Terms and Conditions
- Exhibit D Insurance and Indemnification

2. Term of Agreement.

a. This Agreement shall be effective _____, 2017 (“Anniversary Date”) and shall remain in effect until as terminated in accordance with the provisions set forth in Section 2.b. below or in Section 4 of Exhibit C (“Term”).

b. Given the sensitive nature of Dr. Mackey’s position, and the difficulty of replacing Dr. Mackey, nothing in this Agreement shall prevent, limit, or otherwise

interfere with the right of Dr. Mackey to terminate this Agreement at any time, **provided** Dr. Mackey has first given at least sixty (60) days' written notice to the Sacramento County Fire Chiefs Association and the Center of his scheduled date of termination.

3. Independent Contractor.

- a. TPMG enters into this Agreement as an Independent Contractor.
 - (1) In the performance of this Agreement through the assignment of Dr. Mackey to perform the Services, all actions of TPMG and Dr. Mackey shall be those of an independent contractor.
 - (2) Neither Dr. Mackey nor any of TPMG's other employees are, or shall be considered, officers, employees or agents, of the Center. As such, they are not entitled to benefits of any kind or nature normally provided to employees of the Center, and/or to which Center's employees are normally entitled, including, but not limited to, State Unemployment Compensation, CalPERS Retirement, or Workers' Compensation.
 - (3) TPMG is solely responsible for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to TPMG's employees.
 - (4) TPMG agrees that Dr. Mackey will be the only person performing work under this Agreement.

- b. Dr. Mackey
 - (1) Dr. Mackey, in the performance of his obligations pursuant to this Agreement, is only subject to the control or direction of the Center as to the designation of tasks to be performed and the results to be accomplished. The Center shall have no right of control over the manner in which the work is to be performed (including the means and methods), but rather only as to its outcome.
 - (2) Under no circumstances shall Dr. Mackey look to the Center as his employer, or as a partner, agent, or principal.
 - (3) Dr. Mackey shall not be entitled to any benefits accorded to Center employees, including by way of illustration and not limitation, Workers' Compensation, disability insurance, CalPERS retirement, vacation or sick pay.
 - (4) Dr. Mackey shall have no power or authority to bind the Center in any respect.

c. Nothing in this Agreement, or in the services to be performed pursuant to this Agreement, shall be construed to be inconsistent with this Independent Contractor relationship or status.

4. Scope of Services.

TPMG shall furnish to the Center the services described in Exhibit A-1 and Exhibit A-2 (“Services”).

5. Compensation.

TPMG shall receive payment, as specified in Exhibit B, for Services satisfactorily rendered pursuant to this Agreement.

6. General Terms and Conditions.

Exhibit C sets forth the General Terms and Conditions that are part of this Agreement.

7. Insurance and Indemnification.

Exhibit D sets forth the Insurance and Indemnification provisions that are a part of this Agreement.

8. Notice.

Any notice required by this Agreement may be given either by personal service or by deposit (postage prepaid) in the U.S. Mail addressed as follows:

To Center:

Sacramento Regional Public Safety
Communications Center
10230 Systems Parkway
Sacramento, CA 95827
Attention: Chief Executive Director

To TPMG:

The Permanente Medical Group
[address]
[city, state, zip]
Attention: _____

[SIGNATURES ON PAGE 4]

The Parties have executed this Agreement on the dates indicated below.

**SACRAMENTO REGIONAL PUBLIC
COMMUNICATIONC CENTER**

By: _____

Name: _____

Its: _____

Date: _____

**THE PERMANENTE MEDICAL
GROUP**

By: _____

Name: Richard Isaacs, M.D., FACS

Its: _____

Date: _____

By: _____

Name: Jay Goldman M.D.

Its: _____

Date: _____

DR. KEVIN E. MACKEY

Date: _____

APPROVED AS TO FORM:

Sandra D. Parker

**Exhibit A-1 to
Independent Contractor Agreement for Special Services**

SCOPE OF SERVICES

1. General.

- a. Dr. Mackey shall provide, during the Term of this Agreement, the Fire Service Medical Director/Medical Oversight functions that are outlined in this Scope of Services (A-1) and Annual Goals (A-2).
- b. TPMG represents and warrants that Dr. Mackey has the qualifications, experience, and ~~facilities~~ faculties to properly perform required services in a thorough, competent, and professional manner.
- c. Medical Director must:
 - (1) be familiar with State statutes relating to California Health and Safety Code Title 22, Sacramento County Emergency Medical Services Agency (SCEMSA) protocols, as well as the rules and regulations pertaining to the above;
 - (2) be familiar with the State's Mandatory Reporting Regulations, and the Federal Controlled Substances Act;
 - (3) possess valid licensure with the Drug Enforcement Agency for controlled substances procurement/disposal;
 - (4) possess a valid California license as a medical doctor;
 - (5) be NIMS (National Incident Management System) compliant;
 - (6) possess a valid California Driver License, Class C; and
 - (7) possess documentation verifying his legal right to work in the United States.
- d. This is a Department of Health and Human Services Category I position. Tasks associated with this position involve exposure to blood, body fluids, and tissues.
- e. TPMG agrees that services shall be performed and completed in the manner of, and according to the professional standards observed by, a competent practitioner of the profession in which Dr. Mackey is engaged.
- f. Dr. Mackey shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any information previously identified and/or marked as confidential information related to the

work of the Center or the operations or procedures of the Center without the prior written consent of the Center's Chief Executive Director.

- g. Dr. Mackey agrees that, during the term of this Agreement, he shall not take any action that would either create the appearance of partiality, or a conflict of interest.

2. Summary.

The Medical Director is responsible for:

- a. Medical Oversight (both direct and indirect) associated with both the fire and ~~rescue-EMS~~ divisions of the member and contract agencies of the Center who are participants in the SCEMSA;
- b. providing oversight and direction concerning fire service medical issues including Emergency Medical Dispatch (EMD);
- c. providing medical consultation to major support functions;
- d. providing on-scene support under the direction of the Incident Commander or his/her designee;
- e. applying specialized medical knowledge to assure safety in field emergency medical services operations, including Emergency Medical Dispatch (EMD);
- f. making decisions and providing expert consultation on a broad range of medical considerations; and

3. Essential Services.

Listed below are essential services that will be performed by Medical Director each year that this Agreement is in effect.

- a. Narcotics.

The Medical Director will:

- (1) Coordinate the continual maintenance and monitoring of narcotic security with all ALS fire based providers dispatched by the Center who are participants in the SCEMSA.

Notes:

(a) *This will require that the Medical Director have unrestricted access to all narcotic utilization records for each ALS provider and personnel, when requested.*

(b) *The EMS Chief for each dispatched agency will provide the Medical Director with a weekly report on narcotic utilization, with details worked out by the Medical Director and the EMS ~~Officers~~Chiefs.*

(2) Conduct a bi-annual system-wide narcotic inventory, plus other inspections as necessary to generate with DEA-acceptable reports.

(a) All substances must be kept current and have appropriate authorization signatures to demonstrate accountability.

(b) Register and manage all controlled substances ~~that~~ which are used in accordance with local, state, and federal statutes and regulations.

(c) Medical Director will assure comprehensive record keeping and security measures for controlled substances in accordance with law.

Note: Dedicated bi-annual inspection (usually takes between a half a day and a full day) to rotate ambulances for narcotic inspection, with dedicated EMS personnel including the EMS Chief to conduct the inspections.

b. Quality Assurance.

The Medical Director will:

(1) Participate in quality assurance investigations as needed or requested.

(a) All EMS ~~Officers~~ Chiefs will be required to notify and involve the Medical Director when a quality assurance investigation regarding patient care is referred to human resources, is likely to involve discipline, or is referred to the Sacramento County Emergency Medical Services Agency and/or the State EMS Authority.

(2) Initiate patient care quality assurance investigations as needed.

(3) Lead a quarterly quality improvement meeting, comprised of representation from the Center, Member agencies, and contracting agencies, to address each measure and the specific measures for each PI objective.

- c. Maintain, and oversee an ~~a~~Automatic External ~~e~~Defibrillator program to be practiced under his medical license. This will be done in compliance with all state laws, rules and regulations.
- d. Maintain liaison with other physicians, including other Fire Service Medical Directors and local emergency department physicians.
- e. Attend regional, state, and national meetings directly related to his role as the Center's Medical Director.
- f. Interact with regional, state and local EMS authorities to ensure that standards, needs and requirements are met and resource utilization is optimized.
- g. Oversee all EMS post exposure prophylaxis program.
- h. Report to County Fire Chiefs of the Center on a bi-monthly basis or as requested.
- i. Conduct training concerning treatment and transportation protocols for EMT and EMT-P, and will have access to implement immediate alterations or amendments.
- j. Represent the Fire Service to the EMS System, as well as represent the medical community to the Fire Service.
- k. Observe, monitor, and make recommendations as to the availability/quality of EMS care and transportation provided by the Center and its member and contracting agencies.
- l. Provide medical oversight and expertise to continuous quality improvement (CQI) programs by reviewing and analyzing EMS effectiveness, system trends, and needs in an effort to ensure EMS system excellence.
- m. Develop and assist in the formulation of policies and procedures.
- n. Participate in call reviews with emergency dispatch personnel, firefighters/paramedics, and firefighter/EMTs.
- o. Assist in problem solving in field clinical decision making.
- p. Participate with member agencies in investigations and/or disciplinary actions of EMS personnel.
- q. Respond to activation of (1) the EOC (Emergency Operations Center), and/or (2) FOC (FEMA Operations Center).
- r. ~~Have~~Provide oversight of TEMS (Tactical Emergency Medical Support) protocol.

s. ~~Have~~Provide oversight of the Center's adopted EMD Protocol (currently Medical Priority Dispatch System (MPDS)).

t. Receive automatic response notifications of the following incidents, and shall respond in accordance with a previously established plan:

(1) Level 3 ~~or higher~~ HazMat for firefighter evaluation and care;

(2) Multi-alarm (three or more) structure/wildland fires to assist in rehab and firefighter care;

(3) Firefighter injury with Code 3 response to hospital;

~~(54) Center or agency personnel experience a high-level exposure to a potential infectious disease.~~

~~(45)~~ As requested by EMS Chief or higher (e.g. sick building, large scale MCI, etc.)

~~(5) Center or agency personnel experience a high-level exposure to a potential infectious disease.~~

u. Provide coordinated-care (pit crew) CPR training for the Center and for every member agency and contract agency of the Center, including bi-annual dedicated EMS training system-wide for cardiac arrest care.

v. In coordination with agency personnel, measure cardiac arrest metrics, including CodeSTAT / RescueNET reviews of every adult medical cardiac arrest with direct feedback to the company officer as soon as possible, ideally before the conclusion of the rotation.

w. Provide bi-monthly reports of cardiac arrest performance divided out by department and shift, as well as an aggregate report of the entire fire service.

x. Meeting Attendance.

The Medical Director will attend the following meetings on behalf of the Center, and its member and contract agencies:

(1) Sacramento County: Medical Advisory Committee and Operational Advisory Committee~~and Operational Oversight Committees~~

(2) Sacramento County Fire Chiefs Association

(3) Emergency Medical Directors Association of California (quarterly meetings)

Notes:

(a) *Estimated costs for attendance at this meeting (airfare, hotel, ground transportation and daily meal allowance) equals Two Thousand One Hundred Dollars (\$2,100.00).*

(b) *Annual dues = Three Hundred Dollars (\$300.00).*

(4) National Association of EMS Physicians (annual meeting)

Notes:

(a) *Estimated costs for attendance at this meeting (airfare, hotel, ground transportation and daily meal allowance) equals Three Thousand Dollars (\$3,000.00).*

(b) *Annual dues = Five Hundred Twenty-Five Dollars (\$525.00).*

(5) Gathering of Eagles Annual Conference

Note: Estimated costs for attendance at this meeting (airfare, hotel, ground transportation and daily meal allowance) equals Two Thousand Five Hundred Dollars (\$2,500.00).

y. Permissions and training on the use of target safety for posting training.

z. In addition to the training and education responsibilities set forth above, the Medical Director will meet with each academy class conducted by either the Center or a member agency at least once to present a one-hour lecture on quality improvement in the fire service, the role of the fire service medical director, and recognizing “sick, not sick.”

**Exhibit A-2 to
Independent Contractor Agreement for Special Services**

ANNUAL GOALS

1. For 2017/2018, Annual Goals include:

a. Endotracheal Intubation.

Develop standards and quality measures for adult and pediatric endotracheal intubation, which shall include a complete review of all adult and pediatric intubations including objective measures of success in airway management (oxygen saturation, end tidal CO2 measurement and waveform capnography).

Note: This will require that the Medical Director have unrestricted access to all ePCRs and patient data for every patient contact.

b. Video-Assisted Intubations.

Complete review of all video-assisted intubations with direct performance feedback to the operator.

Note: This will require that the Medical Director have unrestricted access to all video recordings and to personnel to discuss cases.

c. Quality Improvement.

(1) Coordinate with the EMS ~~officers~~ Chiefs, EMS nurses, and EMS staff to identify at least three (3) specific patient-centered goals and measures that will be a uniform focus of all agencies dispatched by the Center.

(a) These measures will include airway management, cardiac arrest performance, and twelve-lead transmission.

(b) Develop focused training on basic 12-lead EKG reading/interpretation.

- Train personnel on proper 12-lead transmission (including decisions to transmit, why transmission is important, etc.);
- Implement a quality improvement process to track and follow 12-lead transmissions with feedback to the company officers on non-STEMI 12-lead transmissions.

- (2) Each agency will need:
- (a) The capability to provide information on all cardiac arrests immediately following the arrest by either (a) upload to the server (wi-fi) or (b) download to a thumb drive;
 - (b) Physiocontrol LP-12 fire department will need to purchase Code STAT (approximately \$13,000). Zoll fire departments MAY need to purchase the Enterprise version of Rescue NET;
 - (c) To dedicate the time of an EMS captain for one (1) hour each day to perform CPR performance reviews, and send them to the Medical Director.

(3) Website Development.

- (a) The Medical Director will: develop a Medical Director component of the Center's website, which will contain:
- a "Case of the Week,"
 - educational postings,
 - links to useful websites.
- (b) The website will serve as a central source of information for all fire personnel from their Medical Director.

2. For 2018/2019 and subsequent years:

- a. The Medical Director will work with the Center, and its member agencies and contract agencies, to develop Annual Goals for the Medical Director that are designed to improve the delivery of EMS services.
- b. Those Annual Goals shall become, each year, a new Exhibit A-2 to this Agreement.

**Exhibit B to
Independent Contractor Agreement for Special Services**

COMPENSATION

1. Compensation.

a. Base Amount.

In exchange for providing the services described in Exhibit A to this Agreement, TPMG shall be paid One Hundred Twenty-Five Thousand Dollars (\$125,000) per fiscal year (July 1 through June 30). Except as noted in 1.b. and 1.c. below, this annual amount is “all” inclusive.

b. Travel.

Medical Director will be reimbursed for costs associated with out-of-county travel for attendance at key state and national EMS meetings. Travel and the amount of reimbursement shall be approved in advance by the Center’s Governing Board in accordance with a written request submitted by the Medical Director.

c. Membership Dues.

Upon written request of the Medical Director, Center shall consider payment for other memberships that enhance the Medical Director’s ability to perform agreed-upon services.

2. Payment.

a. Schedule.

Payment will be made quarterly in arrears on the following dates:

- September 30 (Q1)
- December 31 (Q2)
- March 30 (Q3)
- June 30 (Q4)

b. Process.

Payment shall be made (for all undisputed amounts) within thirty (30) calendar days after TPMG submits an invoice to the Center for Services actually completed.

3. Evaluation.

A yearly evaluation will be performed on Dr. Mackey’s Anniversary Date.

4. Services Outside Scope.

If Dr. Mackey is requested to perform services that he feels are outside of his Scope of Services (see Exhibit A to this Agreement), Dr. Mackey may submit a written request (in advance of performing the work) to the Center's Chief Executive Director and Sacramento County Fire Chiefs Association asking for a review of the requested service and whether additional compensation is warranted.

5. Other.

1. Vehicle.

Dr. Mackey will be assigned a Response Vehicle (with logo) that is equipped with a Mobile Data Computer and the ability to respond Code 3 to emergencies. Code 3 responses are not permitted unless Dr. Mackey has completed an Emergency Vehicle Operations Course.

2. Office Space.

Dr. Mackey will be given a dedicated office or space with building access at the headquarters office of each of the four Center member agencies.

- a. Dr. Mackey is required to spend sixty-five (65) hours of dedicated office time per month with member agencies.
- b. Hours at each agency to be agreed upon in advance and noticed to each agency to allow for planned visits or personnel contacts.

**Exhibit C to
Independent Contractor Agreement for Special Services**

GENERAL TERMS AND CONDITIONS

1. **Standard of Care.** Dr. Mackey's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California fire agencies.
2. **Originality of Services.** TPMG agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the Center and/or used in connection with this Agreement, shall be wholly original to TPMG and shall not be copied in whole or in part from any other source, except those submitted to TPMG by the Center as a basis for such services.
3. **Product.** TPMG understands and agrees that all matters produced under this Agreement shall become the property of the Center and cannot be used without the Center's express written permission. The Center shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the Center. TPMG consents to the use of TPMG's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
4. **Termination.**
 - a. **Without Cause by the Center.** The Center may, at any time, with or without reason, terminate this Agreement and compensate TPMG only for services satisfactorily rendered to the date of termination. Written notice by the Center shall be sufficient to stop further performance of services by TPMG. Notice shall be deemed given when received by TPMG or no later than three (3) days after the day of mailing, whichever is sooner.
 - b. **Without Cause by TPMG.** TPMG may not terminate this Agreement without cause.
 - c. **With Cause by the Center.** The Center may terminate this Agreement upon giving written notice of intent to terminate for cause. Cause shall include:
 - (1) material violation of this Agreement by TPMG; or
 - (2) any act by TPMG exposing the Center to liability to others for personal injury or property damage; or
 - (3) TPMG is adjudged bankrupt, TPMG makes a general assignment for the benefit of creditors, or a receiver is appointed on account of TPMG's insolvency.Written notice by the Center shall contain the reasons for such intent to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, the Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the Center may secure the required services from another contractor. If the expense, fees, and/or costs to the Center exceed the cost of providing the service pursuant to this Agreement, TPMG shall immediately pay the excess expense, fees, and/or costs to the Center upon the receipt of the Center's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the Center.
 - d. **With Cause by TPMG.** TPMG may terminate this Agreement upon giving of written notice to terminate for cause. Cause shall include:
 - (1) material violation of this Agreement by the Center; or
 - (2) any act by the Center exposing TPMG to liability to others for personal injury or property damage; or
 - (3) the Center is adjudged bankrupt, the Center makes a general assignment for the benefit of creditors or a receiver is appointed on account of the Center's insolvency.Written notice by TPMG shall contain the reasons for such intention to terminate and unless ~~within thirty (30) calendar days after that notice~~ the condition or violation ~~shall~~ cease, or satisfactory arrangements for the correction thereof be made, this Agreement ~~shall upon the expiration of~~ shall terminate thirty (30) calendar days after the written notice is give-~~cease and terminate.~~

The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to TPMG.

- e. The decision to terminate this Agreement by the Center, whether with or without cause, shall only be made by a unanimous vote of the Center's Governing Board.
 - f. Upon termination, TPMG shall provide the Center ~~will~~ with all documents produced, maintained or collected by TPMG pursuant to this Agreement, whether or not such documents are final or draft documents.
5. **Indemnification/Defense/Hold Harmless.** To the furthest extent permitted by California law, TPMG shall, at its sole expense, defend, indemnify, and hold harmless the Center, the State of California, and their agents, representatives, officers, consultant, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by TPMG in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The Center shall have the right to accept or reject any legal representation that TPMG proposes to defend the indemnified parties.
6. **Insurance.** TPMG shall procure and maintain at all times it performs any portion of the Services the insurances specified in Exhibit D to this Agreement.
7. **Confidentiality.** TPMG and TPMG's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services ("Confidential Information"), and shall not disclose Confidential Information, including information derived from Confidential Information, to any person not a party to this Agreement without the express prior written consent of the Center, except as required by law or as necessary for TPMG's agents, personnel, employee(s), and/or subcontractor(s) to perform the Services. If TPMG or any of TPMG's agents, personnel, employee(s), and/or subcontractor(s) is served with any subpoena, court order, or other legal process seeking disclosure of any Confidential Information, both

TPMG and the person served shall promptly send to the Center notice(s) of the legal process, but in no event shall do so any later than forty-eight (48) hours or such shorter time frame as necessary ~~to~~ so that the Center may exercise any applicable legal rights and remedies. TPMG shall require its agents, personnel, employee(s), and/or subcontractor(s), as a condition of their retention, appointment, employment, or contract, to agree to comply with the provisions of this Section, and shall not permit its agents, personnel, employee(s), and/or subcontractor(s) access to Confidential Information in the absence of such agreement being effective. The obligations imposed in this Section shall survive the termination of this Agreement.

8. **Conflict of Interest.** Through its execution of this Agreement, TPMG acknowledges that it is familiar with the provisions of Gov. Code § 1090 et seq. and Chapter 7 of the Political Reform act of 1974 (Gov. Code § 87100 et seq.), and certifies that it does not know of any facts that constitute a violation of those provisions. In the event TPMG receives any information subsequent to execution of this Agreement that might constitute a violation of these provisions, TPMG agrees it shall immediately notify the Center of this information.
9. **Approval of Legislative Body.** This Agreement shall not be binding upon the Center until the Center's Governing Board has approved all terms and conditions contained herein.
10. **Disputes.** In the event of a dispute between the Parties as to performance of the Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, TPMG shall neither rescind the Agreement nor stop performing the Services.
11. **Limitation of Liability.** Other than as provided in this Agreement, the Center's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall the Center be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
12. **Compliance with Laws.** TPMG shall observe and comply with all rules and regulations of the Governing Board of the Center and all federal,

state, and local laws, ordinances and regulations. TPMG shall give all notices required by law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If TPMG observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, TPMG shall notify the Center, in writing, and, at the sole option of the Center, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon TPMG's receipt of a written termination notice from the Center. If TPMG performs any work ~~that which~~ is in violation of any laws, ordinances, rules or regulations, without first notifying the Center of the violation, TPMG shall bear all costs arising therefrom.

13. Permits/Licenses. TPMG and all TPMG's employees or agents shall secure and maintain in force all permits and licenses that are required by law in connection with the furnishing of Services pursuant to this Agreement.

~~**14. Safety and Security.** TPMG is responsible for maintaining safety in the performance of this Agreement. TPMG shall be responsible to ascertain from the Center the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.~~

1514. Anti-Discrimination. It is the policy of the Center that, in connection with all work performed under contracts, there ~~by~~ be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender express, age, sexual orientation, or military and veteran status, or any other class or status protected by applicable law, and therefore, TPMG agrees to comply with applicable federal and state laws including, but not limited to the California Fair Employment and Housing Act beginning with Gov. Code § 12900 and Labor Code § 1735. In addition, TPMG agrees to require like compliance by all its subcontractor(s).

1615. Audit. TPMG shall establish and maintain books, records, and systems of account in accordance with generally accepted accounting principles, reflecting all business operations of TPMG transacted under this Agreement. TPMG shall retain these books, records, and systems of account during the Term of this Agreement and

for three (3) years thereafter. TPMG shall permit the Center, its agents, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts form all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the Center shall give reasonable prior notice to TPMG and shall conduct audit(s) during TPMG's normal business hours, unless TPMG otherwise consents.

1716. Evaluation of TPMG and Subordinates.

The Center may evaluate TPMG in any manner which is permissible under the law. The Center's evaluation may include, without limitation:

- a. requesting that the Center's employee(s) evaluate TPMG and the TPMG's employees and subcontractors and each of their performance;
- b. announced and unannounced observance of TPMG, TPMG's employee(s), and/or subcontractor(s).

1817. Time is of the Essence. Time is of the essence in the performance of Services and the timing requirements agreed upon by the Parties, if any, shall be strictly adhered to unless otherwise modified in writing in accordance with Section ~~27 26~~ of this Exhibit C. TPMG shall commence performance, and shall complete all required Services no later than the dates agreed upon by the Parties. Any Services for which times for performance are not specified shall be commenced and completed by TPMG in a reasonably prompt and timely manner based upon the circumstances and direction communicated to TPMG by the Center.

1918. Provisions Required by Law Deemed

Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject, which are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.

- | **2019. Assignment and Successors.** Neither the Center nor TPMG shall, without the prior written consent of the other Party, assign the benefit or in any way transfer their respective obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
- | **2120. Severability.** In the event that any provision of this Agreement shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this Agreement.
- | **2221. Force Majeure.** No Party shall be liable to any other Party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire, flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife, or any other cause beyond a Party's reasonable control.
- | **2322. Venue/Governing Laws.** This Agreement shall be governed by the laws of the State of California and venue shall be in Sacramento County.
- | **2423. Attorney's Fees.** If suit is brought by either Party to enforce any of the terms of this Agreement, each Party shall bear its own attorney's fees and costs.
- | **2524. Exhibits.** All Exhibits referred to in this Agreement are incorporated in this Agreement and made a part of this Agreement as if fully set forth herein.
- | **2625. Entire Agreement.** This Agreement represents the entire agreement between the Center and TPMG and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing, signed by both the Center and TPMG.
- | **2726. Modification.** This Agreement may be amended at any time by the written agreement of the Center and TPMG.
- | **2827. Waiver.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
- | **2928. Authority.** The individual executing this Agreement on behalf of TPMG warrants that he/she is authorized to execute this Agreement on behalf of TPMG and that TPMG will be bound by the terms and conditions contained herein.
- | **3029. Headings and Construction.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include

plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.

3130. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. A facsimile or electronic signature shall be as valid as an original.

**Exhibit D to
Independent Contractor Agreement for Special Services**

INSURANCE AND INDEMNIFICATION

1. Insurance.

a. TPMG shall procure and maintain at all times it performs any portion of the Services the following insurances with minimum limits equal to the amounts indicated below.

- (1) Commercial General Liability and Automobile Liability Insurance. Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect TPMG, the Center, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from the performance of any portion of the Services. (Form CG 0001 and CA 0001)
- (2) Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, TPMG shall be required to secure Workers' Compensation insurance coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.
- (3) Professional Liability (Errors and Omissions). Professional Liability (Errors and Omissions) Insurance as appropriate to TPMG's profession.

Type of Coverage	Minimum Coverage
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Automobile Liability Insurance – Any Auto Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Professional Liability	\$1,000,000
Workers' Compensation	Statutory Limits
Employers' Liability	\$1,000,000

b. TPMG shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to the Center and approved by the Center. Certificates and insurance policies shall include the following:

- (1) A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Center, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after the date of mailing the notice."

- (2) Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- (3) An endorsement stating that the Center and the State and their representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that TPMG's insurance policies shall be primary to any insurance or self-insurance maintained by the Center.
- (4) All policies shall be written on ~~an~~-a per occurrence form, except for Professional Liability, which shall be on a claims-made form.

2. Indemnification.

- a. TPMG agrees to hold harmless and indemnify the Center, officers, agents, and employees from and against any and all losses, liability, or damages arising out of, in consequence of, or resulting from the negligent acts and/or omissions of Dr. Mackey.
- b. The Center agrees to hold harmless and indemnify TPMG, its officers, agents, and employees from and against any and all losses, liability, or damages arising out of, in consequence of, or resulting from the negligent acts and/or omissions of the Center.
- c. TPMG shall name the Center as an additional insured on its General Liability and Medical Malpractice/Professional Liability insurance, and shall provide a Certificate of Insurance evidencing this coverage to the Center prior to, or contemporaneously with, execution of this Agreement. All insurance policies shall require that the Center be provided with thirty (30) days' notice of cancellation of any such policies. Such insurance shall be primary. Any insurance maintained by the Center shall be in excess of and not in contribution with insurance required under this Agreement.
- d. The Center agrees to indemnify and hold harmless Dr. Mackey for any and all clinical issues related to care provided by employees of the Member Agencies. In addition, the Center will assume all costs, liabilities, and penalties associated with an investigation and/or prosecution related to clinical issues related to care provided by an employee of the Member Agencies.